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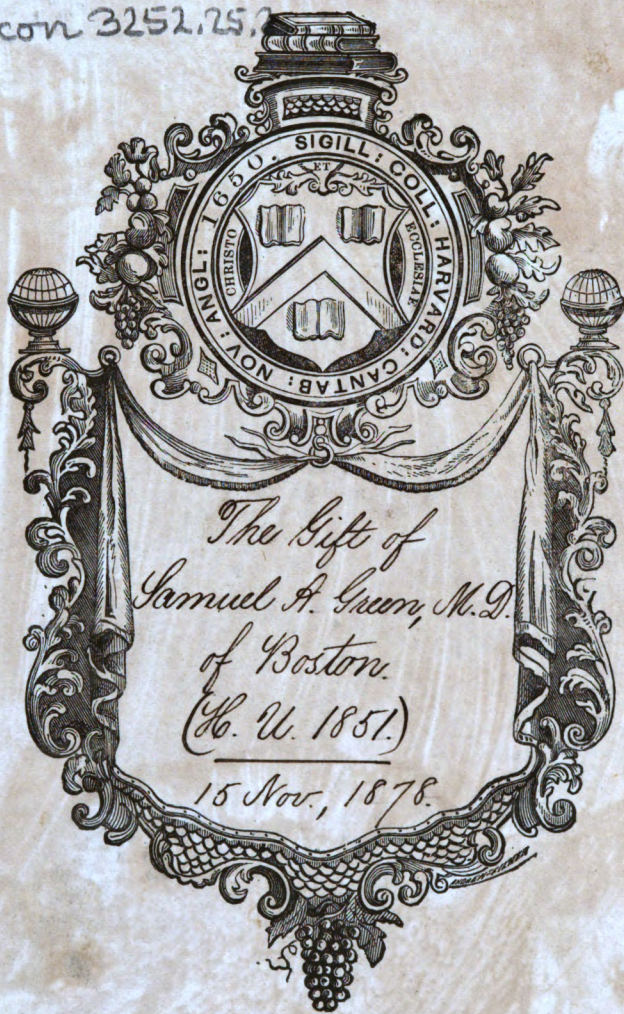
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Commonwealth of Massachusetts.

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A N A C T

TO REVISE AND CONSOLIDATE

THE PROVISIONS OF THE GENERAL STATUTES
AND SUBSEQUENT GENERAL ACTS

RELATING TO

RAILROADS.

Approved June 27, 1874.

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A N A C T

TO

REVISE AND CONSOLIDATE THE PROVISIONS OF THE GENERAL
STATUTES AND SUBSEQUENT GENERAL ACTS

RELATING TO

R A I L R O A D S .

*Be it enacted by the Senate and House of Representatives, in General
Court assembled, and by the authority of the same, as follows :*

I. PRELIMINARY SECTIONS.

1. Extent and Purview of this Act.

SECTION 1. This act may be cited as the "General Railroad Act," one thousand eight hundred and seventy-four.

General railroad
act.

SECTION 2. In the construction of this act, except where such meaning would be repugnant to the context or contrary to the manifest intention of the legislature, the phrase "railroads and railways" shall be construed to include all railroads and railways in this Commonwealth (except marine railways), whether operated by steam or by animal power, and whether operated by the corporations owning them or by other corporations or otherwise; "railroad" shall be construed to mean a railroad or railway operated by steam power; "street railway" shall be construed to mean a railroad or railway operated by animal power. The phrase "railroad corporation" shall be construed to mean the corporation which lays out, constructs, maintains or operates a railroad operated by steam

Construction of
certain words
and phrases.

power, and "railroad company" shall have no different meaning from "railroad corporation." The phrase "street railway company" is reserved for a corporation by which a street railway is constructed, maintained or operated.

When railroad is constructed by one corporation and operated by another, the latter is subject to all duties and liabilities.

SECTION 3. When a railroad laid out and constructed by one corporation is lawfully maintained and operated by another corporation, the latter shall be subject to the duties, liabilities, restrictions and other provisions as they are set forth in this act, respecting or arising from the maintenance and operation of such railroad, in the same manner as if it had been laid out and constructed by said latter corporation. When a railroad is lawfully maintained and operated by trustees, they shall in like manner be subject to the duties, liabilities, restrictions and other provisions respecting or arising from the maintenance and operation of such railroad which are attached in this act to the corporation for whose stockholders or creditors or either they are trustees.

Powers and duties.

SECTION 4. Railroad corporations heretofore established in this Commonwealth, whether by special act or in conformity with the provisions of the general law passed in the year one thousand eight hundred and seventy-two, shall have the powers and privileges and be subject to the duties, liabilities, restrictions and other provisions contained in this act; which, so far as inconsistent with charters granted since the eleventh day of March, one thousand eight hundred and thirty-one, shall be deemed and taken to be in alteration and amendment thereof: *provided*, that nothing herein contained shall be construed to impair the validity of any special power heretofore conferred by charter or other special act upon any particular railroad corporation which has already exercised such power, or to prevent the continued exercise thereof, conformably, so far as may be, to the provisions of this act; nor shall anything herein contained affect any act done or any right accruing, accrued or established, or any proceedings, doings or acts ratified or confirmed, or any suit or proceeding had or commenced in any case before the act takes effect, but the proceedings therein shall, when necessary, conform to the provisions of this act; and all persons who at the time when this act takes effect hold any office under any of the acts consolidated herein, shall continue to hold the same according to the tenure thereof.

SECTION 5. In the application of this act to the fixing of routes or the location, construction, maintenance and operation of railroads in the city of Boston, unless it is otherwise provided in such section, the duties imposed by any section of this act upon the mayor and aldermen of a city or upon the selectmen of a town, or upon the county commissioners as a tribunal of original jurisdiction, shall devolve upon the board of aldermen of said city; and when a jury is required, application therefor shall be made to the superior court in the manner prescribed in section twenty-nine of chapter forty-three of the General Statutes; and duties devolved upon the county commissioners by reference or appeal from the mayor and aldermen or selectmen, shall, in cases arising in said city, devolve upon the board of railroad commissioners.

Location and construction of railroads in Boston.

2. Board of Railroad Commissioners.

SECTION 6. There shall be a board of railroad commissioners, consisting of three competent persons. The governor, with the advice and consent of the council, shall, before the first day of July in each year, appoint a commissioner, to continue in office for the term of three years from said day; and if a vacancy happens, by resignation or otherwise, he shall in the same manner appoint a commissioner for the residue of the term, and may in the same manner remove any commissioner. Said board shall have a clerk, to be appointed by the governor, whose duty it shall be to keep a full and faithful record of the proceedings of said board, and to serve such notices as may be required of him by the commissioners. Said commissioners and clerk shall be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same; and no person in the employ of any railroad corporation, or owning stock in any railroad corporation, shall hold either of said offices.

Railroad commissioners.

Clerk of board.

SECTION 7. Said commissioners shall have the general supervision of all railroads and railways, and shall examine the same, and keep themselves informed as to their condition and the manner in which they are operated, with reference to the security and accommodation of the public, and the compliance of the several corporations with the provisions of their charters and the laws of the

Commissioners to have supervision of railroads.

Commonwealth; and the provisions of the six following sections shall apply to all railroads and railways, and the corporations, trustees or others owning or operating the same.

To see that all laws are complied with.

SECTION 8. Whenever in the judgment of the railroad commissioners it shall appear that any such corporation has violated any law, or neglects in any respect or particular to comply with the terms of the act by which it was created, or with the provisions of any of the laws of the Commonwealth, they shall give notice thereof in writing to such corporation; and if the violation or neglect is continued after such notice, the board shall forthwith present the facts to the attorney-general, who shall take such proceedings thereon as he may deem expedient.

Repairs, rolling-stock, station houses, &c.

SECTION 9. Whenever, in the judgment of the railroad commissioners, it shall appear that repairs are necessary upon any such railroad, or that any addition to the rolling stock, or any addition to or change of the stations or station-houses, or any change in the rates of fares for transporting freight or passengers, or any change in the mode of operating the road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, they shall give information in writing to the corporation of the improvements and changes which they adjudge to be proper; and a report of the proceedings shall be included in the annual report of the commissioners to the legislature.

Commissioners to examine condition of road, upon complaint, &c., of city and town authorities.

SECTION 10. Upon the complaint and application of the mayor and aldermen of any city, or the selectmen of any town, within which any part of any such railroad is located, it shall be the duty of the railroad commissioners to make an examination of the condition and operation thereof; and if twenty or more legal voters in any city or town shall, by petition in writing, request the mayor and aldermen of such city, or the selectmen of such town, to make the said complaint and application, and the mayor and aldermen, or the selectmen, refuse or decline to comply with the petition, they shall endorse upon the petition the reason of such non-compliance, and return it to the petitioners; and the petitioners may thereupon, within ten days of such refusal and return, present the petition to said commissioners; and said commissioners shall, if upon due inquiry and hearing of the petitioners they think

the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and aldermen of any city, or the selectmen of any town. Before proceeding to make such examination in accordance with such application or petition, said commissioners shall give to the petitioners and the corporation reasonable notice in writing of the time and place of entering upon the same. If upon such examination it shall appear to said commissioners that the complaint alleged by the applicants or petitioners is well founded, they shall so adjudge, and shall inform the corporation operating such railroad of their adjudication, in the same manner as is provided in section nine.

SECTION 11. The board of railroad commissioners shall investigate the causes of any accident on a railroad resulting in loss of life, and of any accident not so resulting, which, in their judgment, shall require investigation.

To investigate causes of accidents.

SECTION 12. Every railroad corporation shall at all times, on request, furnish the railroad commissioners any information required by them concerning the condition, management and operation of its railroad, and particularly with copies of all leases, contracts and agreements for transportation, with express companies or otherwise, to which it is a party, and also with the rates for transporting freight and passengers upon its road and other roads with which its business is connected.

To be furnished by railroads with information as to condition, management, &c.

SECTION 13. No request or advice of the railroad commissioners shall have the effect to impair in any manner or degree the legal duties and obligations of any railroad corporation or its legal liability for the consequence of its acts, or of the neglect or mismanagement of any of its agents or servants.

Advice of commissioners not to relieve railroad from legal duties and liabilities.

SECTION 14. The board of railroad commissioners shall make an annual report to the legislature of their doings, including such statements, facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the Commonwealth, and such suggestions as to the general railroad policy of the Commonwealth, or as to any part thereof, or as to the condition, affairs or conduct of any of the railroad corporations, as may seem to them appropriate.

Annual report to be made to the legislature.

SECTION 15. The board of railroad commissioners shall prescribe the form for the annual return required to

To prescribe form of returns to be made by railroads.

be made by railroad corporations, and may, from time to time, make changes and additions in such form, giving to the corporations one year's notice of any such changes or additions as require any alteration in the method or form of keeping their accounts; and the board shall, on or before the fifteenth day of September in each year, furnish blank forms of such returns. When the return received from any corporation is defective or probably erroneous, the board shall notify the corporation to amend the same within fifteen days. The board shall prepare such tables and abstracts of all the returns as they shall deem expedient, and their annual report shall be transmitted to the secretary of the Commonwealth on or before the first Wednesday in January in each year, to be laid before the legislature. The originals of the returns, or returns as amended, subscribed and sworn to by the directors of the corporations, shall be preserved in the office of the board.

Commissioners' report.

SECTION 16. Thirty-five hundred copies of the annual report of the board of railroad commissioners, together with the returns of the corporations, shall be printed as a document of the public series, bearing from year to year such number therein as may be assigned to it by the secretary of the Commonwealth, and such number of copies of said document as he may determine shall be bound in a substantial volume, one copy of which shall be furnished to each member of the legislature for the time being, and one copy (on application therefor) to any corporation whose return is printed therein. In addition, three thousand copies of their annual report shall be printed for the use of the commissioners.

Salaries of commissioners and clerk.

SECTION 17. The annual salary of the railroad commissioners shall be four thousand dollars each, and of their clerk two thousand five hundred dollars, payable quarterly from the treasury of the Commonwealth. The commissioners shall be provided with an office in the state house, or in some other suitable place in the city of Boston, in which their records shall be kept. In the discharge of the duties of their office, they shall be transported over the several railroads and railways in the Commonwealth, free of charge; they may employ and take with them experts, or other agents, whose services they may deem to be temporarily of importance; and they may draw upon the treasurer of the Commonwealth for a sum not exceed-

ing five hundred dollars annually, to be expended by them in procuring necessary books, maps, statistics and stationery, and in defraying expenses incidental and necessary to the discharge of the duties of their office. A statement of such expenditures shall accompany their annual report.

SECTION 18. The annual expenses of said board, including salaries, shall be borne by the several corporations owning or operating railroads or street railways, according to their income and profits, to be apportioned by the tax commissioner, who, on or before the first day of July in each year, shall assess upon each of said corporations its just proportion of such expenses, in proportion to its income and profits, for the year next preceding that in which the assessment is made, and such assessments shall be collected in the manner provided by law for the collection of taxes upon corporations.

Annual expenses of board to be borne by corporations.

3. Establishment of Railroad Corporations.

SECTION 19. Any number of persons, not less than twenty-five, a majority of them being inhabitants of this state, may associate themselves together by articles in writing, with the intention of forming a railroad corporation; and, upon complying with the provisions of section twenty-nine of this act, shall, with their associates and successors, be and remain a corporation, with the powers and privileges, and subject to the duties, liabilities and restrictions set forth in this act.

Establishment of railroad corporations.

SECTION 20. The articles of association shall set forth the name of the corporation; the termini of the railroad proposed to be built; its length as near as may be, and the name of each city, town and county through or into which its route extends; its gauge, which shall be either four feet eight and one-half inches, or three feet; the amount of the capital stock of the corporation, which shall not be less than fifteen thousand dollars for each mile, when the gauge is four feet eight and one-half inches, and not less than five thousand dollars for each mile, when the gauge is three feet, and divided into shares of one hundred dollars each; and the names of at least nine persons to act as a board of directors until others are chosen by the corporation. Each associate shall subscribe to the articles his name, residence, post-office address, and the number of shares of stock which he agrees to take;

Articles of association.

but no subscriber shall be bound to pay beyond ten per centum of the amount of his subscription, unless a corporation is duly established.

Corporate name.

SECTION 21. The corporate name assumed shall be one not in use by any other corporation in this state, shall contain the words "railroad company" at the end thereof, and shall be changed only by act of the legislature. The associates may, from time to time, at any meeting called for the purpose, reduce the amount of the capital stock: *provided*, that it shall not be reduced below the limit prescribed in the preceding section; and they may, in like manner, change the gauge of their road to the other gauge allowed by said section. The directors shall be subscribers to the articles of association, and a majority of them shall be inhabitants of this state. They shall appoint a clerk to keep a record of their doings, and a treasurer, who shall hold their respective offices until a clerk and treasurer of the corporation are chosen. The directors may fill any vacancy which may happen in their board, or in the office of clerk or treasurer, previous to the establishment of the corporation.

Directors to publish articles of association in newspapers.

SECTION 22. The directors shall cause a copy of the articles of association to be published in one or more newspapers in each county in which the said road is proposed to be located, at least once a week for three successive weeks, and also cause a copy of said articles to be posted in each city or town in which said road is proposed to be located, at least three weeks before proceeding to fix the route of said road. The sworn certificate of the clerk shall be evidence of the posting and publication.

To prepare map of route, obtain report of engineer and estimate of cost of construction.

SECTION 23. The directors shall prepare a map of the proposed route on an appropriate scale, with a profile thereof on a vertical scale of ten to one as compared with the horizontal scale; and with the report of a skilful engineer, based on actual examination and survey, showing the kind and amount of excavation, filling, bridging and masonry required, the proposed grades, the number of high-ways and other railroads, if any, and of navigable streams and tide-waters, if any, to be crossed, and the manner proposed for crossing the same, which must be conformable to the provisions of section eighty-five, the general profile of the surface of the country through which the road will pass, the feasibility of the route, the manner of constructing the road, and a detailed estimate of the cost of construction.

SECTION 24. The directors shall submit said map and report of the engineer to the selectmen of any town, and the mayor and aldermen of any city named in the articles of association; such selectmen or mayor and aldermen shall thereupon appoint a place and time for a hearing, of which notice shall be given by publication in one or more newspapers published in the county for two successive weeks, the last publication to be at least two days prior to the hearing, and by posting copies of the notice in at least two public places in the town or city at least two weeks before such hearing.

To submit map, &c., to mayor and aldermen.

Hearing to be had.

SECTION 25. Whenever the selectmen of any town or the mayor and aldermen of any city named in the articles of association, after such notice, exhibition of the map, and hearing, shall agree with the directors as to the proposed route or any route of their railroad in said town or city, such agreement shall be sufficient to fix the same; and said selectmen or mayor and aldermen shall sign and give to the directors a certificate, setting forth the route so fixed.

Route may be agreed upon.

SECTION 26. Whenever the directors fail to agree with the selectmen of any town or the mayor and aldermen of any city as to the route of their railroad in such town or city, said directors may petition the board of railroad commissioners to fix the route in said town or city, who, after due notice to said selectmen or mayor and aldermen, shall hear the parties and fix the route in such town or city. Such board shall make a certificate setting forth the route as fixed by them; and the same shall be certified by the clerk of said board to the directors. The costs of the petition shall be paid by the directors. All variations from the route first proposed shall be made upon the map.

If agreement is not made, route may be fixed by commissioners.

SECTION 27. The route of a railroad fixed under the two preceding sections may include such spurs and branches and connecting and terminal tracks in any city or town as may be necessary to enable the corporation to conveniently collect and deliver passengers and freight in such city or town; but no such branch, spur or connecting or terminal track shall be laid longitudinally within the limits of a public way without the consent of the mayor and aldermen, or the selectmen, and in giving such consent they may impose such conditions as to the location, construction and use thereof as may be agreed upon between themselves and the directors; and the corporations owning or

Route thus fixed may include spurs and branches.

operating any such tracks so laid longitudinally in a public way, shall, in respect to the same, be liable to the city or town in which the same are laid, for all loss or damage caused thereto by the construction and use of such tracks, and by the negligence or default of their agents or workmen thereon.

When sufficient capital stock has been subscribed for certificate, map and report to be deposited with board.

SECTION 28. When the amount of capital stock named in section twenty has been subscribed to the articles of association in good faith by responsible parties, and at least ten per centum of the par value of each and every share thereof actually paid in cash to the treasurer, the directors, clerk and treasurer shall endorse upon the articles of association, or annex thereto their certificate, setting forth these facts, and that it is intended in good faith to locate, construct, maintain and operate the railroad upon the route fixed as aforesaid, and shall also annex to said articles the certificate of publication mentioned in section twenty-two and the several certificates fixing the route of the railroad, and shall present the same for inspection to the board of railroad commissioners, and shall at the same time deposit in the office of said board the report of the engineer and the map.

Clerk to certify when requirements of law have been complied with.

SECTION 29. Whenever it is shown to the satisfaction of the board of railroad commissioners that the requirements of this act preliminary to the establishment of a railroad corporation have been complied with, the clerk of said board, upon their order, shall endorse upon the articles of association, or annex thereto, a certificate, setting forth the fact that the requirements of the law appear to have been complied with. The directors shall thereupon file the articles of association, with all the certificates endorsed thereon or annexed thereto, in the office of the secretary of the Commonwealth; who, upon the payment to him of a fee of fifty dollars (to be included in his return of fees and paid into the treasury), shall record the said articles of association and certificates endorsed thereon in a book to be kept for that purpose, and shall issue a certificate substantially in the following form:—

Form of certificate.

COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas [names of the subscribers to the articles of association] have associated themselves with the intention of forming a corporation under the name of the [name of the corporation] for the purpose of locating, constructing, maintaining and operating a railroad [description of the road as in the articles of association] and

have complied with the statutes of this Commonwealth in such cases made and provided; now therefore, I, [name of the secretary] secretary of the Commonwealth of Massachusetts, do hereby certify that the persons aforesaid, their associates and successors, are legally established as a corporation, under the name of the [name of the corporation]; with all the powers and privileges, and subject to all the duties, liabilities and restrictions set forth in all general laws which now are or hereafter may be in force relating to railroad corporations.

In witness whereof, I have hereunto subscribed my official signature, and affixed the seal of said Commonwealth, this day of in the year [Day, month and year.]

The certificate, so executed, shall be recorded with the articles of association; and the original certificate, or a duly certified copy of the record thereof, shall be conclusive evidence of the establishment of the corporation at the date of such certificate. To be recorded.

SECTION 30. Upon the issue of the certificate of establishment, as provided in the preceding section, the corporation may proceed to organize, and to locate its railroad upon the route already fixed, and to construct, maintain and operate the same, in the manner hereafter prescribed, subject to the following special provisions,— Organization of corporation, &c.

First. The first meeting of such corporation shall be called by a notice signed by a majority of the directors, stating the time, place and purpose of such meeting; and the clerk shall, seven days at least before the day appointed therefor, deliver to each subscriber, or leave at his usual place of business or residence, or deposit in the post-office, prepaid, and directed to him at his post-office address, a copy of such notice. The clerk shall make an affidavit of his doings in regard thereto, which shall be recorded with the records of the corporation. First meeting.

Second. If the capital stock fixed in the articles upon the filing of which the certificate of establishment was issued, is found to be insufficient for the construction or equipment of the railroad, the corporation, at a meeting called for the purpose, may increase the same from time to time, to the amount necessary for the purposes aforesaid. The corporation may in like manner reduce the amount of the capital stock, provided it shall not be reduced below the limit prescribed in section twenty; and may in like manner change the gauge to the other authorized gauge. If any such increase or reduction of capital or change of gauge is made, a certificate of the fact shall Capital stock.

within thirty days thereafter be filed in the office of the secretary of the Commonwealth.

Construction of road to be commenced within two years, and completed within four years.

Third. If such corporation does not begin the construction of its road and expend thereon at least ten per centum of the amount of its original capital stock, within two years after the date of its certificate of establishment, and does not complete its road and open the same for use within four years after said date, its corporate powers and existence shall cease.

Fourth. No corporation having a railroad of the gauge of three feet, shall commence running its trains, until its paid-up capital stock shall be equal to at least one-half of its cost, including equipment.

When main road is finished, branches and extensions may be built.

SECTION 31. A railroad corporation, after having finished the construction of its main road and put the same in operation, may build branches or extensions of its railroad at any time in accordance with the provisions of this act regulating the construction of railroads, whenever an amount of additional capital stock applicable solely to the construction of such branch or extension shall have been subscribed, and a certificate filed according to the provisions of section forty-seven of this act. Upon the filing of such certificate there shall be paid to the secretary of the Commonwealth the sum of fifty dollars, which shall be included in his return of fees and paid into the treasury: *provided, however*, that nothing herein contained shall authorize the construction of any branch railroad within the distance of eight miles from the state house, or invalidate any lease or contract between railroad corporations made pursuant to existing provisions of law.

Fee of \$50 to be paid to secretary of Commonwealth.

Construction of branch, &c., to be commenced within two years and completed within four years.

SECTION 32. If any railroad corporation proceeding to build a branch or extension under this act, or by authority of any prior act, shall not have begun the construction of its branch or extension, and shall not have expended thereon at least ten per centum of the additional capital stock required by the preceding section, within two years after the date of the certificate mentioned therein, or after the passage of the act authorizing such branch or extension, and shall not have completed and put in operation such branch or extension within four years after said date, its powers under such prior act shall cease, and no further proceedings shall be had under this act.

Petition to legislature for act of incorporation,

SECTION 33. If any persons shall see fit to present to the legislature a petition for an act of incorporation for

the purpose of constructing a railroad, such persons shall conform to the provisions of sections thirteen, fourteen, fifteen and sixteen of chapter sixty-three of the General Statutes, hereinafter excepted from repeal; but the exception of such sections from repeal shall not be construed as in any way affecting the manner herein before provided for establishing railroad corporations and constructing railroads; and the routes of railroads hereafter constructed, including branches and extensions, shall be fixed according to the provisions of sections twenty-five and twenty-six of this act, excepting so far as the route of such railroad, branch or extension may have been already fixed by some special act; and the location and construction of such railroads, branches and extensions when not now actually begun shall proceed according to the provisions of this act.

route, location
and construction.

SECTION 34. Whenever any railroad, or any branch or extension of a railroad shall be finished and opened for use, the corporation by which the same was constructed shall within one year thereafter cause a map and profile thereof, with tables of grade and curvature, and a statement of the other characteristics of the road, in such form as the board of railroad commissioners may prescribe, to be certified by its president and engineer, and filed in the office of the secretary of the Commonwealth.

When road is
opened for use,
map, &c., to be
filed in office of
secretary of
Commonwealth.

4. Town Subscriptions.

SECTION 35. Any town and any city having by the census of the year eighteen hundred and seventy less than thirty thousand inhabitants, within which the road of any railroad corporation hereafter organized, or the roads of any existing railroad corporation not now constructed shall be located or terminate, may subscribe for and hold shares of the capital stock or the securities of such railroad corporations, or either of them, to an amount not exceeding, for the aggregate in all such corporations, two per centum of the valuation of such town or city for the year in which the subscription is made; and towns having a valuation not exceeding three millions of dollars may subscribe for and hold the securities of such corporation or either of them to an amount not exceeding three per centum of the valuation of such town in the year in which the subscription is made, in addition to the two per centum herein before provided: *provided*, that two-thirds of the

Towns and
cities may take
stock in railroad
corporations.

legal voters, present and voting by ballot and using the check-list, at legal meetings called for the purpose in such town or city, and held in like manner as the meetings for the choice of municipal officers are now held by law in such town or city respectively, shall vote to subscribe for such shares or securities in such corporation.

May become an associate for formation of corporation.

SECTION 36. Any town or city may vote, in accordance with the provisions of the preceding section, to become an associate for the formation of a railroad corporation in compliance with section nineteen of this act, and by virtue of such vote, may become an associate in such corporation, with all the powers and privileges enjoyed by any individual associate.

Town or city to authorize a person to execute its vote.

SECTION 37. The form in which the matters provided for in the two preceding sections shall be submitted to the voters of any town or city, shall be determined, in cities by a concurrent vote of both branches of the city council, and in towns by the selectmen; and whenever a town or city has voted to subscribe to the stock or securities of a railroad corporation, or to become an associate for the formation of such corporation, the mayor and aldermen, in cities, and the selectmen in towns, shall select some person who shall be authorized, in behalf of said city or town, to execute its vote.

Subscription to be made within twelve months from vote.

SECTION 38. If any subscription, authorized under section thirty-five, by vote of any town or city, is not actually made, by the persons authorized, within twelve months from said vote, such vote shall be void; and unless, within the said period part of said subscription shall have actually been paid, or unless some proceeding is commenced, by such corporation to enforce payment thereof, and unless at least twenty per centum of the capital stock of the corporation to which the subscription is made shall have been actually paid in, in cash, and at least ten per centum of such capital stock is actually expended by such corporation in the construction of its road, said subscription shall be void; but nothing in this act contained shall invalidate the action of any town which may have already subscribed for shares or securities of any railroad corporation before the expiration of the time limited by section thirty, or by the charter of such corporation, as now existing, for the construction of its railroad.

Towns and cities may raise money by tax or

SECTION 39. Towns and cities subscribing for stock or securities under this act, may raise money to pay for the

same by tax or loan, and may issue their notes or bonds for such loan; they may hold and dispose of such stock and securities in like manner as other town property, and the selectmen of towns, and such persons as may be authorized by vote of the city council of cities, may at all meetings of the corporations in which the stock or securities are held, represent their respective municipalities and vote upon each and every share of stock owned by them respectively.

loan to pay for stock.

II. THE CORPORATION.

1. Annual Meeting, President and Directors, &c..

SECTION 40. Every railroad corporation shall hold at least one meeting in each year, for the choice of directors. Such meeting shall be known as the annual meeting, and shall be held at such convenient place as shall be established by its by-laws. At such meeting the corporation shall fix the number of directors for the ensuing year, which number shall not be less than five.

Annual meeting.

SECTION 41. At all meetings of railroad corporations, each stockholder shall be entitled to one vote for each share held by him; but no stockholder shall be entitled to a vote for any shares beyond one-tenth part of the whole number of shares of the capital stock, except that cities, towns and railroad corporations may vote upon the whole number of shares held by them as provided in sections thirty-nine and fifty-seven. No vote shall be given upon shares owned by the corporation or pledged in any form to or for its benefit.

Votes of stockholders.

Handwritten: 1/10

SECTION 42. No proxy shall be valid unless executed and dated within six months previously to the meeting at which it is used. No person shall as proxy or attorney cast more than fifty votes, unless all the shares so represented by him are owned by one person. No officer of the corporation shall ask for, receive, procure to be obtained or use any proxy vote; except that he may, as proxy or attorney, cast twenty votes if all the shares so represented by him are owned by one person. No salaried officer of the corporation shall vote as proxy or attorney. An officer of a railroad corporation who violates any of the provisions of this section, shall, for each offence, forfeit and pay a fine of not less than one hundred dollars nor more than five hundred dollars; and the

Proxies.

supreme judicial court, upon petition of any stockholder, after due notice and satisfactory proof of such offence, shall cause such officer to be forthwith removed from his office; and such removal shall forever after disqualify him from holding office in such corporation.

Directors, treasurer and clerk.

SECTION 43. The immediate government and direction of the affairs of every railroad corporation shall be vested in a board of directors who shall hold their offices for one year or until others are elected in their places. The directors shall elect one of their number to be president of the board and of the corporation, and they may elect another of their number to be vice-president. They may choose a clerk, who shall be sworn, and a treasurer, who shall give bonds to the corporation in the sum required by the by-laws for the faithful discharge of his trust.

2. *Capital Stock, Assessments, &c.*

Shares to be deemed personal estate.

SECTION 44. The shares in the capital stock of railroad corporations shall be deemed personal estate, and may be transferred by a conveyance in writing, recorded either by the treasurer, in books to be kept in his office, or by an officer duly authorized by the directors, in books to be kept at such other place as they may appoint. When recorded in such other place, they shall within ten days thereafter be also recorded in the books kept by the treasurer; and no conveyance of shares unless so recorded shall be valid against any other persons than the grantors or their representatives. On making the transfer, a new certificate shall be issued.

Transfers.

Assessments upon shares.

SECTION 45. The directors may from time to time make such equal assessments, on all the shares in the corporation (not exceeding in the whole one hundred dollars on a share), as they deem expedient and necessary for its purposes, and may direct the same to be paid to the treasurer, who shall give notice thereof to the subscribers or stockholders. When a subscriber has paid nothing upon his shares after thirty days from the time when an assessment has become due, his shares may be declared forfeited by the directors, who may transfer them to any responsible person who subscribes for the same and pays the assessment then due. Or if a stockholder neglects to pay an assessment for thirty days after notice from the treasurer, the directors may order the treasurer, after giving notice of the sale, to sell such shares by public auction to the

highest bidder, and the same shall accordingly be transferred to the purchaser. If the shares of a stockholder do not sell for a sufficient sum to pay his assessments, with interest and charges of sale, he shall be liable to the corporation for any deficiency; if such shares sell for more, he shall be entitled to the surplus remaining.

If shares do not sell for enough to pay assessments, stockholder liable for balance.

SECTION 46. When a railroad corporation has authority to increase its capital stock or to issue additional shares of stock for any purpose, it shall, if the cash market value of its shares exceeds the par value thereof, sell and dispose of all shares of such new or additional stock for the benefit of the corporation in the manner provided in this section; and only such number of shares shall be issued as, so sold and disposed of, will produce the amount necessary for the purposes for which such increase or issue is duly authorized by law. All shares so issued shall be offered for sale to the highest bidder at public auction in the city of Boston, and notice of the time and place of such sale shall be published at least five times during the ten days immediately preceding the sale, in the newspaper in which the general laws are published, and in two other daily newspapers in said city, or if the road of the corporation does not terminate in said city, such notice shall be published in the first-mentioned newspaper as aforesaid, and at least once a week for three successive weeks preceding the sale in one or more newspapers published in each county through or into which its road extends. Not exceeding two thousand shares of the stock of any such corporation shall be offered for sale on one and the same day; and no share shall be sold or issued for a less sum to be actually paid in cash than the par value thereof.

Sale of shares when capital stock is increased.

SECTION 47. No railroad corporation shall begin to construct its road or any branch or extension thereof until an amount of the capital stock equal to at least fifteen thousand dollars for each mile of road proposed to be built when the gauge is four feet eight and a half inches, and five thousand dollars for each mile when the gauge is three feet, has been actually subscribed in good faith by responsible parties, without any condition which invalidates the subscription, and twenty per centum of the par value of each and every share thereof actually paid into its treasury; nor until a certificate setting forth these facts, signed and sworn to by the president and a majority of the directors, is filed with the secretary of the Commonwealth.

Conditions upon which construction of road may be commenced.

Fee of \$50 to be paid to secretary of Commonwealth.

Capital may be increased for building branch, &c.

Upon filing such certificate, there shall be paid to the secretary the sum of fifty dollars, which shall be included in his return of fees and paid into the treasury.

SECTION 48. A railroad corporation, for the purpose of building a branch or extension or of aiding in the construction of another railroad, may increase its capital stock, and, in so doing shall conform to the provisions of section forty-six of this act.

3. Issuing Bonds.

Bonds may be issued for funding floating debt.

SECTION 49. Any railroad corporation by vote at a meeting called for the purpose, may issue bonds, to provide means for funding its floating debt or for the payment of money borrowed for any lawful purpose. Such bonds may be either "coupon bonds" or "registered bonds," as may be determined by said vote, in sums of not less than one hundred dollars each, payable at periods not exceeding twenty years from the date thereof and bearing interest not exceeding the rate of seven per centum a year, payable annually or semi-annually, to an amount which, including that of bonds previously issued, shall not exceed for the aggregate of all bonds, whether registered or coupon, the capital stock of the corporation actually paid in at the time the bonds are issued. They shall be recorded by the treasurer in books to be kept in his office. No bond shall be issued unless approved by some person appointed by the corporation for that purpose, who shall certify that it is properly issued and recorded as aforesaid.

Registered bonds may be issued.

SECTION 50. At the request of the owner or holder of any coupon bonds lawfully issued, other than bonds the payment of which has been or shall be guaranteed by the Commonwealth, the railroad corporation which issued such coupon bonds may issue registered bonds in exchange for and lieu of them, upon such terms and under such regulations as may be prescribed by the directors of the corporation, with the consent and approval of the trustees to whom any mortgage or pledge shall have been executed; and such registered bonds shall, with the exception of the coupons, correspond in all respects with the coupon bonds for which the same are exchanged, and shall be in conformity with all laws authorizing the issue of the coupon bonds. Such exchange shall not affect any mortgage or pledge given as security for the payment of such coupon bonds, and such mortgage or pledge shall remain in full

force as security for such registered bonds : *provided*, that the coupon bonds shall be cancelled and destroyed at the same time that the registered bonds are issued in lieu thereof.

SECTION 51. No railroad corporation which has previously issued bonds shall subsequently make or execute any mortgage upon its road, equipment and franchise, or any of its property, real or personal, without including in and securing by such mortgage all bonds previously issued and all preëxisting debts and liabilities of the corporation.

Mortgage not to be executed without securing bonds previously issued.

SECTION 52. All bonds or notes issued by a railroad corporation shall be binding and collectable in law, notwithstanding such bonds or notes were negotiated and sold by the corporation or its agents at less than par.

Bonds and notes collectible, although issued at less than par.

4. Taking Stock or Bonds of other Companies.

SECTION 53. Except by special authority of the legislature or as authorized in the four following sections, no railroad corporation shall directly or indirectly subscribe for, take or hold any shares in the stock, or any bonds, of any other corporation or company, or guarantee the bonds or dividends of any other corporation or company ; and the amount of the bonds of one or more other corporations or companies subscribed for and held by any railroad corporation, or guaranteed by it, conformably to any special authority of the legislature or the authority given in said sections, shall not, together with the amount of its own bonds, issued in conformity with sections forty-nine and fifty, exceed at any time the amount of its capital stock actually paid in cash.

Taking stock or bonds in other companies.

(a.) Of Telegraph Companies.

SECTION 54. A railroad corporation may hold stock in a telegraph company whose line of telegraph connects two or more places on the line of the railroad, to an amount not exceeding two hundred dollars for each mile of railroad so connected:

Taking stock in a telegraph company.

(b.) Of Steamship Companies.

SECTION 55. A railroad corporation may guarantee to an amount not exceeding five per centum of its capital stock the bonds of any corporation incorporated by the legislature of this Commonwealth, for the purpose of carrying

Guarantee of bonds in steamship companies.

freight, passengers and mails between any port of this Commonwealth and Europe; or a railroad corporation, upon adequate security therefor, may issue its own bonds to the same amount, conformably to the provisions of section forty-nine.

(c.) *Of other Railroad Corporations.*

When roads connect, &c., either may guarantee the bonds of the other.

Proviso.

SECTION 56. Where two corporations own and operate railroads wholly constructed and which connect with each other, either corporation may guarantee the bonds of the other upon such terms and to such an extent as may be authorized at a meeting called for the purpose: *provided*, the bonds so guaranteed do not exceed the amount of the capital stock of such other corporation actually paid in cash by its stockholders, and are in all other respects issued in conformity with the provisions of law.

Railroads may aid in construction of branches, &c.

Proviso.

SECTION 57. A railroad corporation may aid in the construction of any branch or connecting railroad within the limits of this Commonwealth, whether connecting by railroad or steamboat lines, by subscribing for shares of stock in such corporation, or by taking its notes or bonds, to be secured by mortgage or otherwise, as the parties may agree, and shall be entitled to vote on all shares of stock so subscribed for and held: *provided*, that no railroad corporation shall so subscribe any amount in excess of two per centum of its paid up capital stock, except by a vote of a majority in interest of the stockholders at a meeting duly called for that purpose, and that no railroad corporation shall mortgage its property to secure the loans or subscriptions made by any other corporation under this section, except by a vote of a majority in interest of the stockholders at a meeting duly called for that purpose.

III. THE RAILROAD.

1. *Location and Construction of the Railroad.*

(a.) *Laying out the Railroad.*

Location and construction.

SECTION 58. A railroad corporation may lay out its road not exceeding five rods wide; and for the purpose of cuttings, embankments, and procuring stone and gravel, may purchase or otherwise take, in the manner hereinafter provided, as much more land as may be necessary for the proper construction and security of the road, or as may be at any time necessary for depot and station purposes;

and the corporation shall within one year file with the commissioners of each county through which the road passes, the location of the road as thus laid out, defining the courses, distances and boundaries of such portion of the road as lies within each county.

SECTION 59. A railroad corporation, having taken land for its road, may vary the direction of the road in the place where such land is situated; but it shall not locate any part thereof without the limits of the route fixed agreeably to sections twenty-five and twenty-six of this act, unless with the consent in writing of the mayor and aldermen or selectmen, if it was fixed under section twenty-five, or of the railroad commissioners if it was fixed under section twenty-six. The corporation shall, before the expiration of the time required for completing the road, file with the county commissioners the location of the different parts where such variations are made; and the time for completing the road shall not be extended in consequence of such variations.

Direction of road may be varied.

Location to be filed where variations are made.

SECTION 60. If a railroad corporation, for the purpose of making or securing its road, or for depot or station purposes, requires land or materials without the limits of the route fixed as aforesaid, and is unable to obtain the same by agreement with the owner, it may apply to the county commissioners, who, after notice to the owner, may prescribe the limits within which the same may be taken in the manner hereinafter provided, without his permission; and the corporation shall file a location thereof within one year with the commissioners of each county in which the same is situated, defining the courses, distances and boundaries of the same.

When land is required without limits of route fixed county commissioners to decide.

SECTION 61. In all cases where the commissioners have already prescribed limits within which land may be taken for the purposes specified in the preceding section, and the same has not been actually taken, such location shall be filed on or before the first day of January in the year one thousand eight hundred and seventy-five, and if not so filed the right to take such land shall then be determined.

Where limits have been prescribed, location to be filed before Jan. 1, 1875.

SECTION 62. Land without the limits of the route fixed as aforesaid so taken or purchased for depot or station purposes shall not be exempt from taxation.

Land so taken for depot not exempt from taxation.

*(b.) Taking Land, and Damages therefor.**Estimate by the County Commissioners.*

Taking land,
and damages
therefor.

SECTION 63. When a railroad corporation is not able to obtain by agreement with the owner, the land or materials necessary for its purposes, as described in the five preceding sections, it may take the same. The corporation shall pay all damages occasioned by laying out and making and maintaining its road, or by taking any land or materials therefor; and such damages shall, upon the application of either party, be estimated by the county commissioners in the manner provided in laying out highways; and when it is intended to take land or materials, application may be made before the actual taking and appropriation thereof.

Applications for
estimate of dam-
ages to be made
within three
years.

SECTION 64. Except as is provided in sections seventy-eight, seventy-nine and eighty, no application to the commissioners to estimate damages for land or other property taken, shall be sustained unless made within three years from the time of taking the same.

Security may be
required for
payment of dam-
ages and costs.

SECTION 65. Upon application to the commissioners by either party for an estimate of damages, they shall, if requested by the owner, require the corporation to give security to their satisfaction for the payment of all damages and costs which may be awarded by them or a jury for the land or other property taken; and if upon petition of the owner, with notice to the adverse party, the security appears to the commissioners to have become insufficient, they shall require the corporation to give further security to their satisfaction; and all the right or authority of the corporation to enter upon or use the land or other property, except for making surveys, shall be suspended until it gives the security required.

Tender may be
made to owner
of land, &c.

SECTION 66. After the commissioners have made their estimate, the corporation may tender to the owner of the land or other property the amount of damages estimated, in full satisfaction thereof with costs taxed to that period.

Either party
may apply for
a jury to assess
damages.

SECTION 67. Either party, if dissatisfied with the estimate of the commissioners, may at any time within one year after it is completed and returned, apply for a jury to assess the damages. If no such application be made, the county commissioners, after the expiration of said term of one year, may issue warrants of distress to compel the payment of the damages, with costs and inter-

est ; and if the corporation, for thirty days after such warrant has issued, neglects to satisfy the same, all right and authority to enter upon or use the land or property, except for making surveys, shall be suspended until payment thereof.

Assessment by a Jury.

SECTION 68. When either party applies for a jury to assess the damages, the proceedings thereupon shall be the same as is provided for the recovery of damages in the laying out of highways, but no jury shall be competent to alter or reverse any order made under section eighty-one. Upon such application the prevailing party shall recover legal costs ; and if the owner has refused the tender mentioned in section sixty-six, with costs taxed to that period, he shall, unless he recovers on the final hearing a greater amount of damages than the sum tendered, pay all costs caused by the application and arising after tender. If the corporation applied for the jury, and upon the final hearing the damages as estimated by the county commissioners are not reduced, it shall pay all costs caused by the application.

Proceedings to be the same as for damages in laying out highways.

SECTION 69. If the corporation shall not pay the amount of damages awarded by the jury within thirty days after such award a warrant of distress or execution may issue to compel the payment thereof, with costs and interest, and all right and authority to enter upon and use the land or property, except for making surveys, shall be suspended until such warrant or execution is satisfied.

Damages to be paid within thirty days.

Plan of Lands taken.

SECTION 70. After a railroad corporation has taken land or other property for the purposes of its road, in the manner herein before authorized, it shall, before proceeding to construct the road, furnish a plan of the land to the owner, and, if requested by the owner or occupant, fence the same ; and upon demand made by the owner of such other property within three years from the taking of the same, such corporation shall within thirty days furnish him with a plan or description thereof in writing. If such plan or description is not so furnished, all the rights of the corporation to enter upon or use such land or other property, except for making surveys, shall be suspended until it has so delivered a description or plan.

Plan of land taken to be furnished to owner.

Fencing.

Location may be changed by county commissioners when it causes unnecessary damage.

SECTION 71. Whenever any owner of land is aggrieved by the location of a railroad, by reason of its crossing his land in such manner as to be of grievous damage, when such damage could be avoided without serious injury to others, he shall have the right, within thirty days after having been furnished with the plan of his land required by the preceding section, to petition the commissioners of the county where the land lies, who shall give due notice and hear the parties. And if it shall appear that such location will greatly and unnecessarily damage the complainant, and that the same can be changed so as to avoid such damage, in whole or in part, without material detriment to the line of the railroad, and without great injury to other parties, the commissioners shall change such location accordingly. Said commissioners shall hear the parties, either at their regular meeting or at a meeting called by their chairman for the purpose, and shall make and give to each party a certificate of their determination in the premises within sixty days after receiving the petition. The compensation of said commissioners, which shall not exceed five dollars a day, their necessary expenses and the costs of the petition, shall be paid by the corporation, unless the commissioners shall decide that the petition was frivolous, in which case such compensation, expenses and costs shall be paid by the petitioner. And such compensation and expenses of the commissioners shall be retained by them to their own use.

Compensation of commissioners.

S. J. C. may restrain road from entering upon land if it fails to comply with requirements.

SECTION 72. If upon the petition of an owner of land or other property it appears to the supreme judicial court or any justice thereof, in term time or vacation, that a corporation has for thirty days neglected to comply with any order under section sixty-five, or to satisfy any warrant or execution mentioned in sections sixty-seven or sixty-nine, or to furnish the plan, or fence the land, as provided in section seventy, the court of justice may by injunction or other suitable process in equity prohibit and restrain the corporation from entering upon or using such land or property contrary to the provisions of said sections.

Special Cases. When Land lies in different Counties.

Jurisdiction of commissioners where land lies in different contiguous counties.

SECTION 73. Where land owned by one person lies contiguously in different counties, applications for damages under section sixty-three may be made by the owner of the land to the commissioners of either of such coun-

ties ; and the commissioners of the county to whom application is first made shall have exclusive jurisdiction, with like powers and duties as set forth in said section and section eighty-one ; and either party may apply for a jury as provided in section sixty-seven, which jury shall be from the same county as the commissioners, and shall estimate such damages the same as though the land lay entirely in one county.

When Land is held in Trust, etc., or Mortgaged, etc.

SECTION 74. When the lands or other property of a person under guardianship, or lands held in trust, are taken for the use of a railroad, the guardian or trustee may release all damages in the premises in like manner as if the same were held in his own right.

Guardian or trustee may release damages, &c.

SECTION 75. When persons having a claim for damages sustained in their property by the laying out or alteration of a railroad have different or separate interests in the property, so that an estate for life or for a term of years in the same belongs to one person and the remainder or reversion in fee to another, entire damages shall be assessed in the same manner as is provided in other cases, without any apportionment thereof ; which damages shall be paid over and disposed of in the manner provided in sections seventeen and eighteen of chapter forty-three of the General Statutes in relation to damages assessed in like cases in laying out highways.

Assessment of damages when estate for life belongs to one and remainder to another.

SECTION 76. Where the lands are mortgaged, both mortgagors and mortgagees, in addition to their rights under the mortgage, shall have the same powers, rights and privileges, and be subject to the same liabilities and duties, as are created and provided in this chapter for land owners in cases of damages arising under section sixty-three ; and all petitions for the estimation of such damages shall state all mortgages known by the party petitioning to exist upon the premises to be adjudicated upon. Mortgagors and mortgagees may join in any such petition, and the tribunal to which it is presented shall order the petitioner to give notice thereof to all parties interested as mortgagors or mortgagees by serving each of them, fourteen days at least before the time of hearing, with an attested copy thereof, and the order thereon, that they may appear at said hearing and become parties to the proceedings.

Damages where lands are mortgaged.

Damages to be divided between mortgagor and mortgagees.

SECTION 77. When mortgagors or mortgagees commence or become parties to proceedings upon a petition for such damages, entire damages shall, upon final judgment, be assessed for the property taken, and such portion thereof ordered to be paid to every mortgagee, being a party, in the order of his mortgage, as is equal to the sum then unpaid thereon, and the balance to the mortgagor; and separate judgment shall be entered accordingly for each mortgagee, who shall hold his judgment in trust, first with any proceeds realized thereon to satisfy his mortgage debt, and after such debt is in any way satisfied, to assign the judgment or pay over any balance of proceeds to the mortgagor or other person entitled thereto.

When the Time is Extended.

When time for location, &c., is extended by statute, claims shall be revived.

SECTION 78. When the time for locating or constructing any railroad is extended by statute, all unsettled claims for land-damages against such corporation shall be revived, and the claimants for such damages may make their application to the county commissioners, or for a jury, if the estimate of the commissioners has been completed and returned, at any time within one year from the passage of such act. This section shall not include cases in which, through defect in the original location of a road already constructed, a new location is rendered necessary.

When suit is brought application for damages may be made within one year after final determination of suit.

SECTION 79. When a suit is brought in which the right of the corporation to lay out and construct its road on any particular location is drawn in question, the time for applications to the county commissioners for the ascertaining of damages caused by the taking of land or property in and upon such location may be made at any time within one year after the final determination of such suit upon the merits: *provided*, that such suit is brought within one year from the time of such taking, or is brought for the purpose of trying the same right which was drawn in question in some former suit brought within one year from the time of taking, which failed for want of jurisdiction, defect of form or other like cause not deciding the merits of the controversy, and is brought within six months after such determination of such former suit.

Proviso.

If proceedings are quashed, &c., may be commenced anew.

SECTION 80. If a party makes application for an estimate of his damages within the time limited by law, or for a jury to assess the same, or is a party to such application for a jury by any other person, and the petition or

other proceeding is quashed, abated or otherwise avoided or defeated, for any inaccuracy, irregularity or matter of form ; or if, after verdict for such applicant or other party, the judgment is arrested or reversed on a writ of error, or the proceedings quashed on certiorari, such applicant, petitioner or other party may commence such proceedings anew at any time within one year from such abatement, reversal or other determination.

(c.) *Order to Construct and Maintain Embankments, Fences, etc.*

SECTION 81. At the time of estimating damages to land owners under section sixty-three, the county commissioners shall in addition thereto order the corporation to construct and maintain such embankments, culverts, walls, fences or other structures as they judge reasonable for the security and benefit of such owners, and prescribe the time and manner of making or repairing the same, which order it shall not be competent for any jury to reverse.

Construction and maintenance of embankments, &c., may be ordered.

SECTION 82. If the corporation neglects to comply with such order, the land owner, or his assigns interested in its execution, may apply to the supreme judicial court, which may grant all processes necessary to enforce the specific performance thereof. Or if it appears that the corporation, for more than forty-eight hours after notice of such neglect, given in writing to the president or superintendent, neglected to commence the work required to be done, or thereafter unreasonably delayed to complete the same, the person so interested may maintain an action of tort against the corporation, in which he may recover double the damages sustained by him by reason of the neglect.

S. J. C. may enforce performance if corporation neglect to comply.

SECTION 83. When the owner of land through which a railroad, constructed prior to the seventeenth day of April in the year eighteen hundred and forty-one, passes, has not received all damages assessed to him, or has not agreed to maintain suitable fences upon such road, upon the application of the owner or of the mayor and aldermen or selectmen of the city or town, the county commissioners may require the corporation to make and maintain fences suitable for the benefit and security of the land owner and of travellers upon the road.

Fences for security of land owner and travellers.

SECTION 84. Every railroad corporation shall erect and maintain suitable fences, with convenient bars, gates or openings therein, at such places as may reasonably be required, upon both sides of the entire length of any rail-

Fences with convenient openings to be built upon both sides of road.

road which it shall have constructed subsequently to the sixteenth day of May in the year eighteen hundred and forty-six, except at the crossings of a turnpike, highway or other way, or in places where a convenient use of the road would be thereby obstructed; and shall also construct and maintain sufficient barriers at such places as may be necessary, where it is practicable to do so, to prevent the entrance of cattle upon the road. A corporation unreasonably neglecting to comply with the provisions of this section shall, for every such neglect, forfeit a sum not exceeding two hundred dollars for every month during which the neglect continues; and the supreme judicial court, or any justice thereof, either in term time or vacation, may, by injunction or other suitable process in equity, compel the corporation to comply with such provisions; and upon such neglect, may restrain and prohibit the corporation from crossing any turnpike, highway or town way, or using any land, until said provisions are complied with.

2. Crossings of one Railroad with another, or over navigable waters.

Crossings of one road with another, or over navigable waters.

SECTION 85. No railroad shall be constructed to cross another railroad at the same level therewith without the consent in writing of the board of railroad commissioners, or across navigable or tide-waters without the consent in writing of the harbor commissioners, and in such manner as they shall prescribe. It shall be unlawful for any persons who associate for the purpose of constructing a railroad conformably to section nineteen, or for any corporation proceeding to construct a branch or extension, or otherwise to take any proceedings contemplating a new crossing of one railroad with another at the same level therewith, unless such crossing shall first have been approved in writing by the board of railroad commissioners; and the preliminary approval of any plan for such crossing shall always be made subject to revision by the board. And the supreme judicial court shall have full equity jurisdiction, on information filed by the attorney-general, in case of any violation of the provisions of this section.

3. Crossing of Railroads with Highways and other Ways.

1. Crossing over or under.

SECTION 86. When a railroad is laid out across a highway or other way, it shall be constructed so as not to obstruct the same; and (unless the county commissioners shall authorize a crossing at the same level as provided in section ninety), it shall be constructed so as to pass either over or under the way, as prescribed in the next section, and conformably to any decree which may be made by the county commissioners under section eighty-eight.

Railroad crossing a highway not to obstruct the same.

SECTION 87. If the railroad is constructed to pass over the way, a sufficient space shall be left under the railroad conveniently to accommodate the travel on the way. If the railroad is constructed to pass under the way, the railroad corporation shall build such bridges, with their abutments and suitable approaches thereto, as will accommodate the travel upon the way: *provided*, that no bridge for any purpose shall hereafter be constructed over any railroad at a height less than eighteen feet above the track of such railroad, except by the consent in writing of the board of railroad commissioners.

If crossing over or under the way, sufficient space to be left for accommodation of travel.

Bridge to be not less than eighteen feet above track.

SECTION 88. A railroad corporation may raise or lower any highway or other way for the purpose of having its road pass over or under the same; but before proceeding to cross, alter or excavate for the purpose of crossing the way, it shall obtain from the county commissioners a decree prescribing what alterations may be made in the way, and the manner and time of making the alterations or structures the commissioners may require at the crossing; and before entering upon, excavating or altering the way, shall give security, satisfactory to the commissioners, to the city or town in which the crossing is situated, that it will faithfully comply with the requirements of the decree to the acceptance of the commissioners, and indemnify the city or town from all damages and charges by reason of any failure so to do.

Highway may be raised or lowered under direction of county commissioners.

2. Alteration to facilitate or avoid crossing.

SECTION 89. A railroad corporation may alter the course of a highway or other way for the purpose of facilitating the crossing of the same by its road or permitting its road to pass at the side thereof without crossing, upon

Course of highway may be altered.

obtaining a decree of the county commissioners prescribing the manner and time of such alteration. Before granting the decree the commissioners, after due notice to the city or town in which the way is situated, shall decide that the alteration will not essentially injure the way. The corporation shall pay all damages occasioned to private property by the alteration, as in case of land taken for its road.

3. *Crossing at a level.*

Crossing at a level.

SECTION 90. When a railroad is laid out across a highway or other way, the county commissioners, upon the application of the railroad corporation, or of the mayor and aldermen or selectmen of the city or town in which the crossing is situated, after due notice to all parties interested, and after hearing the parties, may adjudge that public necessity requires the crossing at the same level, and may make a decree to specially authorize and require the corporation so to construct its road, in such manner as shall be prescribed in the decree; and said commissioners may modify the terms of such decree, or revoke the same, at any time before the construction of the railroad at such crossing.

Rails to be protected to secure safe passage across railroad.

SECTION 91. A railroad corporation whose road is crossed by a highway or other way on a level therewith, shall at its own expense so guard or protect its rails by plank, timber or otherwise, as to secure a safe and easy passage across its road; and if in the opinion of the county commissioners any subsequent alteration of the highway or other way, or any additional safeguards, are required at the crossing, they may order the corporation to establish the same as provided in section eighty-eight.

4. *Highways, &c., laid out over railroads previously constructed.*

Highways, &c., may be laid out across railroad.

SECTION 92. A highway or town way may be laid out across a railroad previously constructed when the county commissioners adjudge that the public convenience and necessity require the same; and in such case, after due notice to the railroad corporation, and hearing all parties interested, they may thus lay out a highway across a railroad, or may authorize a city or town, on petition of the mayor and aldermen or selectmen thereof, to lay out a way across a railroad, in such manner as not to injure or obstruct the railroad, and otherwise in conformity with the provisions of sections eighty-six and eighty-seven; but

not permitting it to cross at a level with the railroad unless public necessity so requires, in which case they may give special authority for such crossing, as provided in section ninety.

5. Provisions relating to turnpikes and canals.

SECTION 93. The provisions of the seven preceding sections shall apply to crossings of railroads and turnpikes, and the county commissioners shall have the same powers as regards such crossings as are provided in said sections for crossings of railroads with highways or other ways. Before proceeding to make any excavations for the purpose of such crossing, or to raise, lower or alter a turnpike for such purpose, the railroad corporation shall notify in writing the turnpike corporation, which within thirty days shall inform the railroad corporation in writing of the alterations, if any, which it may require to have made therein for such purpose. If the parties do not agree, either may apply to the county commissioners, and their decision shall be final. If the railroad corporation unreasonably neglects to make such alteration as the commissioners order, the turnpike corporation shall have the same remedies as are prescribed for the recovery of damages caused by making a railroad. A railroad corporation may, with the consent of a turnpike or canal corporation, alter the course of a turnpike, canal or feeder to a canal, where the same interferes with the convenient location of its road; or the turnpike corporation may, in pursuance of a vote therefor at a meeting called for the purpose, assign and transfer to the railroad corporation its franchise as to the whole or part of the turnpike; and thereafter all the rights and duties of the turnpike corporation shall cease and be discontinued so far as they relate to the part of the turnpike so assigned, and the railroad corporation may locate its road upon any part of the same ground; but no part of a turnpike shall be thus assigned or used without the consent in writing of the county commissioners, if such part is located in a single county, or of the superior court in one county if it lies in two or more counties. Damages caused by taking the property of any person under this section shall be estimated and paid as in case of land taken under section sixty-three.

Crossing turn-
pikes and canals.

6. *Construction and maintenance of structures at crossings.*

Obstructions at crossings.

SECTION 94. If upon application to the county commissioners by the mayor and aldermen or selectmen of any city or town, it appears that a railroad corporation crosses with its road a highway or other way therein so as to cause an obstruction thereto, contrary to the provisions of section eighty-six, or of any decree of the county commissioners made under section eighty-eight, or that it refuses or neglects to keep in proper repair, any bridge or other structure required or necessary at such crossing, the commissioners, after due notice to the corporation, may pass a decree prescribing what repairs shall be made by the corporation at the crossing, and the time within which they shall be made; and shall order the corporation to pay the costs of the application. They may further order the corporation to give security, as provided in section eighty-eight, for the faithful performance of the requirements of the decree and the indemnity of said city or town upon any failure in such performance.

Repairs at crossings.

Repairs of bridges, &c.

SECTION 95. Every railroad corporation shall, at its own expense, construct and afterwards maintain and keep in repair all bridges, with their approaches or abutments, which it is authorized or required to construct over or under any turnpike road, canal, highway or other way; and any city or town may recover of the railroad corporation whose road crosses a highway or town way therein, all damages, charges and expenses incurred by such city or town by reason of the neglect or refusal of the corporation to erect or keep in repair all structures required or necessary at such crossing; but if, after the laying out and making of a railroad, the county commissioners have authorized a turnpike, highway, or other way to be laid out across the railroad, all expenses of and incident to constructing and maintaining the turnpike or way at such crossing shall be borne by the turnpike corporation or the county, city, town or other owner of the same; until or unless, in either case, it shall be otherwise determined by an award of a special commission, as provided in the four following sections.

7. *Alteration of crossings; special commission.*

Alteration of crossings.

SECTION 96. If the mayor and aldermen of a city, or the selectmen of a town, wherein a highway or town way which crosses or is crossed by a railroad is situated, or

the directors of any railroad corporation, whose road crosses or is crossed by such way, are of the opinion that it is necessary for the security or convenience of the public that any alteration should be made in such crossing, or in the approaches thereto, or in the method of such crossing, or in the location of the railroad or in the location of the highway or town way, or in any bridge at such crossing, the county commissioners shall, when, after due notice and hearing of all parties interested, they decide that such alteration is necessary, prescribe the manner and limits within which it shall be made, and forthwith certify their decision in the matter to the parties, and also to the board of railroad commissioners; and when the county commissioners decide that no alteration is necessary, the party making the application shall pay the costs thereof.

SECTION 97. If, under the provisions of the preceding section, the county commissioners decide that the location of the railroad or of the highway or town way shall be changed, land, or other property, may be taken therefor according to the provisions of law; and all damages occasioned by such taking shall be assessed according to the provisions of the laws which now are or hereafter may be in force regulating the taking of land by railroad corporations, or the taking of land for highways and town ways, as the case may be.

Land may be taken and damages assessed.

SECTION 98. The party by whom such decision shall be carried into effect shall be determined by the award of a special commission of three disinterested persons, to be appointed as provided in the next section; and the said special commission shall also determine by what party all charges and expenses occasioned by making such alteration, and all future charges for keeping in repair such crossing and the approaches thereto, as well as all costs of the application to the county commissioners, or of the hearing before said special commission, shall be borne; or said special commission may apportion all such charges, expenses or costs between the railroad corporation and the town, city or county in which said crossing is situated; and the supreme judicial court shall have jurisdiction in equity to compel compliance with all orders, decrees and judgments of said special commission.

Award to be made by a special commission.

SECTION 99. The members of such special commission shall be named within thirty days after the decision that an alteration is necessary, in the following manner: one

Appointment of special commission.

of them shall be named by the county commissioners, if the way that crosses or is crossed by the railroad is a highway, or by the selectmen or mayor and aldermen, if it is a town way; one by the railroad corporation interested; and the third shall be a member of the board of railroad commissioners designated by said board; and if the town, city, county or railroad corporation does not name a member within thirty days after decision aforesaid, the board of railroad commissioners shall name a member in its behalf. The commission shall meet as soon as may be after the several members are named, and in any case within sixty days after the decision aforesaid.

Award to be filed in office of railroad commissioners.

SECTION 100. Any award made under the provisions of section ninety-eight shall be filed in the office of the board of railroad commissioners; and the same shall be final, unless some party affected thereby, within thirty days of the rendering of such award, requests in writing the commission established by said section to return said award into the supreme judicial court for the county in which the crossing is situated, and, upon such request, said commission shall so return said award, which shall be subject to revision in the same manner as if said commission had derived its power to act in the premises under the appointment of said court, and said award, when accepted by said court, shall be final.

When decision has been carried into effect, party may recover of others their proportion awarded to be paid.

SECTION 101. When the party designated for that duty by the award of the special commission has carried into effect the decision of the county commissioners agreeably to said award, such party may recover of any other party, in an action of contract, the proportion awarded to be paid by such other party, with interest; and if the party so designated by the award unreasonably neglects or refuses to carry the decision into effect, any other party affected by such neglect or refusal may proceed to do it, and, in an action of tort against any or all of the others, may recover from each the proportion awarded to be paid by it; and from the party neglecting or refusing, all charges, expenses and costs occasioned thereby.

8. Remedies in cases arising with reference to crossings.

Jurisdiction vested in county commissioners.

SECTION 102. The original jurisdiction of all questions touching obstructions to turnpikes, highways or town ways, caused by the construction or operation of railroads,

shall be vested in the county commissioners within their respective jurisdictions.

SECTION 103. The supreme judicial court shall have jurisdiction in equity, and may compel railroad corporations to raise or lower any turnpike, highway or town way, when the county commissioners have decided in due and legal form that such raising or lowering is necessary for the security of the public; and to comply with the orders, decrees and judgments of county commissioners in all cases touching obstructions to such ways by railroads. And if it is made to appear to the supreme judicial court, or any justice thereof, in term time or vacation, upon the petition of the mayor and aldermen or selectmen of any place, that a corporation has excavated or altered a highway or town way without obtaining the decree and giving the security required by section eighty-eight, or has neglected for fifteen days to give security as required by section ninety-four, the court or justice may, by injunction or other suitable process according to the practice of courts of equity, restrain and prohibit the corporation from entering upon, altering, excavating or crossing the way until such decree is obtained or the security given.

S. J. C. to have jurisdiction in equity, and may compel railroads to raise or lower highway, &c.

4. *Certain Special Cases.*

1. *Obstruction to a private way.*

SECTION 104. No application for damages shall be sustained against a railroad corporation by the owners of a private way, by reason of any obstruction thereto occasioned by the railroad crossing the same, unless the application is made within three years from the time when the way is so obstructed.

Obstruction to a private way.

2. *Severance of private lands.*

SECTION 105. When a railroad lawfully laid out through land without the consent of the owner separates one portion thereof from another, or from a highway or public way, and the owner has a right to cross the railroad, if a difference arises between him and the corporation owning the road as to the place or manner in which he shall cross, either party may apply to the county commissioners to direct such place or manner. The commissioners, after due notice to the other party and hearing the parties, may make such order in relation to such crossing and the costs

Severance of private lands.

of the application as they may deem proper. If a crossing is deemed inconvenient by either party, such party may apply to the commissioners to alter the same, and upon like notice and hearing they may make like order in relation thereto. The commissioners shall not order the corporation to construct or maintain any crossing without its consent, except where it is liable by law or by agreement to construct a crossing for the owner of the land or is the party making the application. No application under this section shall be proceeded with until the applicant furnishes sufficient recognizance to the county, with sureties to the satisfaction of the commissioners, for the payment of costs and expenses according to their order.

3. *Damages by fire. Insurance.*

Losses by fire communicated by locomotive engines.

SECTION 106. Every railroad corporation shall be responsible in damages to any person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines, and shall have an insurable interest in the property upon its route for which it may be so held responsible, and may procure insurance thereon in its own behalf.

4. *Intrusion on lands belonging to railroads.*

No length of possession of land to create right in occupier.

SECTION 107. No length of possession or occupancy of land belonging to a railroad corporation, by an owner or occupier of adjoining land shall create any right to such land of the corporation in such adjoining owner or occupier, or any person claiming under him.

5. *Drawbridges.*

Superintendents of drawbridges.

SECTION 108. Every railroad corporation shall provide for each drawbridge upon the line of its road a steady and discreet superintendent, experienced in the management of vessels, who shall have full control and direction of the passing of vessels through the draw; and shall make and enforce for each drawbridge rules and regulations conformable to the seven following sections.

Drawbridges to be kept closed except on Sundays.

SECTION 109. Every such drawbridge shall be kept closed at all times, except while open for the actual passage of vessels, and except on Sundays. The superintendent shall at all hours of the day and night be ready to open the draw; he shall, having regard to the convenient and secure passage of engines and trains and the state of

the tide, decide when and the order in which vessels may pass, allowing no unnecessary detention; he shall give all necessary advice and furnish proper facilities for such passing; and he shall keep posted up in a convenient place, for the inspection of all interested, a printed copy of the rules and regulations relating to the drawbridge.

SECTION 110. Every commander of a vessel applying to pass such draw shall give the superintendent a true report of his vessel's draught of water, and shall be governed by him as to priority of right when two or more vessels apply to pass at the same time; he shall, unless otherwise directed by the superintendent, in passing, go to the right, according to the tide, if practicable; and, except as he may be authorized by the superintendent, shall so place his buoys, warping-lines, anchors or cables as neither to interfere with other vessels nor obstruct the bridge; and he shall be allowed a reasonable time for his vessel to pass. Railroad trains shall be allowed fifteen minutes to cross a draw before and after their table time for being due, and a further reasonable time to pass shall be allowed to any approaching train.

Passage of vessels to be regulated by superintendent.

SECTION 111. Every drawbridge shall be furnished with conspicuous day and night signals, which shall be displayed at all times in such manner as clearly to indicate to the engineman of an approaching train the position of the draw, whether open or closed.

Drawbridge to be furnished with conspicuous signals.

SECTION 112. The railroad corporation may erect, at a distance of five hundred feet from every drawbridge, or at such other distance as may, on application of the corporation, be prescribed by the board of railroad commissioners, and on each side thereof, a substantial gate, so constructed and connected with the draw by suitable mechanism, that the draw, when in position for the passage of trains, cannot be opened or moved until the gates have been closed across the track in such manner as to be a barrier and warning to any train approaching in either direction.

Gates may be erected across track five hundred feet from bridge.

SECTION 113. If any drawbridge is not furnished with gates as provided in the preceding section, and in all cases when, by reason of darkness or otherwise, the gates or signals connected with any drawbridge are not visible from the engine of an approaching passenger train, the engineman of such train shall bring the same to a full stop at a distance of not less than three hundred nor more than eight hundred feet from the drawbridge, and shall, before

Engineer to see that drawbridge is closed.

Proviso.

proceeding, positively ascertain that the draw is properly closed for the passage of trains: *provided, however, that* when the drawbridge is between two railroad crossings, at grade, within six hundred feet of each other, one stop only shall be required for such crossings and drawbridge.

Penalty on corporations for neglect, &c.

SECTION 114. Every railroad corporation neglecting to comply with the provisions of the three preceding sections shall forfeit the sum of one hundred dollars for each day such neglect is continued; and any engineman or superintendent of a drawbridge, violating any of the provisions of said sections, or any rule or regulation established in conformity thereto by the corporation by which he is employed, shall forfeit the sum of one hundred dollars for each offence. Said forfeitures may be recovered upon complaint or indictment in the county where the offence is committed, to the use of the complainant.

Penalty for obstructing superintendent in performance of duties.

SECTION 115. Whoever obstructs the superintendent in the performance of his duties or violates any provision of the foregoing sections relating to drawbridges shall forfeit not less than three nor more than fifty dollars. Whoever breaks, defaces or impairs any such bridge or wharf, or pier appurtenant thereto, or unnecessarily opens or obstructs the draw without the consent of the superintendent, or without such consent makes fast or moors any scow, raft or other vessel to such bridge within wake of the draw, shall forfeit not less than three nor more than twenty dollars. Whoever wilfully injures or damages any railroad bridge, wharf or pier, or wilfully disturbs or hinders the superintendent in the discharge of his duties shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars, and be further liable in damages to the corporation against which the offence is committed.

6. Stations.

Passenger station maintained for five years not to be abandoned.

SECTION 116. Whenever a railroad corporation has established and maintained throughout the year for five consecutive years a passenger station at any point upon its road, such station shall not be abandoned, nor shall the accommodation furnished by the stopping of trains thereat be substantially diminished as compared with that furnished at other stations on the same road; and in case of any violation of the provisions of this section, it shall be

the duty of the attorney-general, at the relation of ten legal voters of the town or city in which said station is located, to proceed in equity by information to enjoin said corporation from further violation thereof.

SECTION 117. Railroad corporations may re-locate passenger stations and freight depots upon the approval in writing of the board of railroad commissioners, and of the selectmen of the town or the city council of the city in which such stations or depots are situated.

Passenger stations and freight depot may be relocated.

7. Switches. Bridge-Guards.

SECTION 118. All switches hereafter laid down in any railroad track which is used or intended to be used for the running of passenger or mixed trains thereon (including those so laid down in renewal of existing switches), shall be of the kind known as the Tyler switch, or some other kind of safety switch approved in writing by the board of railroad commissioners. For each switch laid down in violation of the provisions of this section, the railroad corporation shall forfeit a sum of two hundred dollars, and the further sum of five dollars for each day the switch is used.

A safety switch, approved by commissioners, to be used.

SECTION 119. Every railroad corporation shall erect and maintain suitable bridge-guards at every bridge or other structure, any portion of which crosses the railroad less than eighteen feet above the track; such guards to be approved by the board of railroad commissioners, and to be erected and adjusted to their satisfaction. Any corporation which refuses or neglects to comply with the provisions of this section shall for each month of continuance in such neglect or refusal forfeit the sum of fifty dollars; and whoever shall wilfully destroy or break any such bridge-guard shall forfeit a sum not exceeding one hundred dollars, and be liable to imprisonment not exceeding thirty days.

Bridge-guards to be erected.

Penalty for destroying bridge-guard.

SECTION 120. No railroad, branch or extension of a railroad, shall hereafter be opened for public use until the board of railroad commissioners, after an examination, certify that all laws relating to the construction thereof have been complied with, and that the road appears to be in a safe condition for operation.

Road not to be opened for public use until laws relating to construction are complied with.

8. Regulations by Law, for the operation of the Railroad.

(a) At crossings of one railroad with another.

Trains to be stopped five hundred feet from crossings at grade.

SECTION 121. When a railroad crosses, or is crossed, by another railroad at the same level, the engineman of every freight train, and, when both of such roads are used for passenger traffic, the engineman of every passenger train, shall, on approaching such crossing, stop his engine within five hundred feet therefrom, and shall not resume his course until signalled to do so, when he shall pass slowly over the crossing; but one stop shall be sufficient for all such crossings within six hundred feet of each other upon the same railroad. Every engineman failing to stop his engine as aforesaid, shall for each offence forfeit one hundred dollars, and the corporation on whose road the offence is committed, shall forfeit the further sum of three hundred dollars; such forfeitures to be recovered by complaint in the county, where the offence is committed.

Commissioners may prescribe rules for crossings.

SECTION 122. The board of railroad commissioners shall have the power, and it shall be their duty, to prescribe regulations either general for all crossings, or special for particular crossings, to apply to such crossings as they may prescribe, in such detail as they may deem expedient, and the supreme judicial court shall have the power to issue any processes necessary to secure the enforcement of such regulations, or to grant, on the petition of said board, an injunction to prevent the running of trains on any railroad upon which the board may represent that any regulation respecting such crossing is not exactly observed. The approval of the railroad commissioners shall be required for a system of signals to be established and maintained in concert by the corporations operating the railroads which cross one another: *provided*, that no regulation or system of signals shall be proposed or established which excepts from the provisions of the preceding section any railroad upon which passenger trains are run by steam power, or any railroad crossed by such railroad.

(b.) At crossings of highways and other ways.

Bell to be rung or whistle sounded eighty rods from crossing of highway, &c.

SECTION 123. Every railroad corporation shall cause a bell, of at least thirty-five pounds in weight, and a steam-whistle, to be placed on each locomotive engine

passing upon its road ; and such bell shall be rung or such whistle sounded at the distance of at least eighty rods from the place where the road crosses upon the same level a turnpike, highway, town way or travelled place, over which a sign-board is required to be maintained, as provided in the next two sections ; and such bell shall be rung or such whistle sounded, either one or the other, continuously or alternately, until the engine has crossed such turnpike, way, or travelled place.

SECTION 124. Every railroad corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained across each turnpike, highway, or town way, where it is crossed by the railroad at the same level ; said posts and boards shall be of such height as to be easily seen by travellers, without obstructing the travel ; and on each side of the boards the following inscription shall be printed in capital letters of at least the size of nine inches each,—RAILROAD CROSSING—LOOK OUT FOR THE ENGINE. When a gate or a flagman is maintained at such crossing, as provided in section one hundred and twenty-six, the corporation may substitute in place of such posts and boards, warning boards on each side of the crossing, of such form, size and description as the board of railroad commissioners shall approve.

Signs to be maintained at crossings.

SECTION 125. If the mayor and aldermen or selectmen of a city or town wherein a travelled place is crossed by a railroad at the same level, decide that it is necessary for the better security of the public, that sign-boards such as are described in the preceding section, should be maintained at such travelled place, they may in writing request the corporation owning the railroad to erect and maintain them. If the corporation neglects or refuses so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of their requests. If the commissioners, after due notice and hearing of the parties, decide that such erection is necessary for the better security of the public, the corporation shall comply with their decision, and pay the costs of the application. If they decide that it is not so necessary, one-half of the costs of the application shall be paid by the city or town, and one-half by the corporation.

Sign-boards to be erected when selectmen or mayor and aldermen request.

SECTION 126. If the mayor and aldermen or selectmen of any city or town in which a turnpike, highway, town way or travelled place is crossed by a railroad at the

Agent may be required to open and close gates, or flagman stationed at crossing.

same level, should be of opinion that it is necessary for the better security of the public, that gates should be erected across such turnpike, highway, town way or travelled place, and that an agent be stationed to open and close such gates when an engine or train passes, or that bars be erected instead of gates, or that a flagman be stationed at the crossing who shall display a flag whenever an engine or a train passes, such mayor and aldermen or selectmen may in writing request the railroad corporation to erect and maintain gates, and station an agent thereat; or to erect bars; or to station a flagman at the crossing. If the corporation refuses or neglects to comply with the request, the mayor and aldermen or the selectmen may apply to the county commissioners. Upon such application, or at any time upon the petition of any party, after due notice and hearing, the commissioners may make such orders for the erection and maintenance of gates or bars, or the stationing of an agent or flagman, or such alteration of arrangements already existing at the crossing, as said commissioners shall decide the better security of human life or the convenience of the public travel require, and may further make such order as to costs as justice may require; and the railroad corporation shall comply with all such orders of the county commissioners, whether made before the railroad is constructed and opened for use, or from time to time afterwards.

Commissioners
may order gates
to be erected,
&c.

Penalty on agent
at crossing for
neglect of duty.

SECTION 127. If an agent stationed at a crossing under the provisions of section one hundred and twenty-six neglects to open or close the gates for the safe passing of an engine on the railroad, or of a traveller on the turnpike, highway, or other way, or if a flagman so stationed neglects to display his flag, the agent or flagman shall for every neglect forfeit a sum not exceeding one hundred dollars; and the corporation shall also be liable for all damages sustained by any person by reason of such neglect of any of its agents.

Penalty on cor-
poration for
neglect to com-
ply with order.

SECTION 128. If a railroad corporation unreasonably neglects or refuses to comply with any order or decision made under section one hundred and twenty-five or one hundred and twenty-six, it shall forfeit for every such refusal or neglect a sum not exceeding one thousand dollars. The supreme judicial court shall have jurisdiction in equity, and may compel railroad corporations to comply with the orders, decrees and judgments of county commis-

sioners in all cases touching the crossing of turnpikes, highways, other ways or travelled places by railroads.

SECTION 129. No railroad corporation, nor its servants or agents, shall wilfully or negligently obstruct, or unnecessarily or unreasonably use or occupy a highway, town way or street; nor in any case with cars or engines, for more than five minutes at one time; and whenever a highway, town way or street has been thus used or occupied with cars or engines, no railroad corporation shall again use or occupy the same with the cars or engines of a freight train, until a sufficient time, not less than three minutes, has allowed the passage across the railroad of such travellers as were ready and waiting to cross when the former occupation ceased. For any violation of the provisions of this section the corporation shall forfeit the sum of one hundred dollars.

Penalty on corporation for obstructing highways, &c.

(c.) Regulations relating to equipment of cars and trains.

SECTION 130. Every railroad corporation shall cause a good and sufficient brake to be attached to every car used upon its railroad for the transportation of passengers, and to every car used for the transportation of freight, except four-wheeled freight cars used only for that purpose; and shall cause to be stationed on every passenger train, trusty and skilful brakemen, equal in number at least to one for every two cars in the train, and one such brakeman upon the last car of every freight train, which must always be equipped with a good and sufficient brake. For any violation of the provisions of this section the corporation shall forfeit a sum not exceeding one hundred dollars.

Brakes and brakemen.

SECTION 131. Every railroad corporation shall equip each of its trains, for use in case of accident, with two guide-plates, two jack-screws, two crow-bars, one pinch-bar, one claw-bar, one spike hammer, two sharp axes, ropes or chains suitable for hauling cars, and such other tools and appliances as the board of railroad commissioners may direct. For any violation of the provisions of this section the corporation shall forfeit the sum of five hundred dollars.

Tools to be carried with trains for use in case of accidents.

SECTION 132. No passenger cars on any railroad shall be lighted by naphtha or by any illuminating oil or fluid, made in part of naphtha, or wholly or in part from coal or petroleum or other substance or material, which will ignite

Passenger cars not to be lighted by explosive oils.

at a temperature of less than three hundred degrees Fahrenheit. Any railroad corporation which violates the provisions of this section shall forfeit a sum not exceeding five hundred dollars.

(d.) Accommodations for passengers.

Reasonable accommodation to be furnished to travellers.

SECTION 133. Every railroad corporation shall furnish reasonable accommodations for the convenience and safety of passengers; and for every wilful neglect to provide the same shall forfeit not less than five nor more than twenty dollars, to be recovered in an action of tort.

Uniform caps and badges to be worn by employés.

SECTION 134. Every railroad corporation shall provide a uniform cap and distinguishing badges to be worn by all its employés whose duties relate to the immediate transportation of passengers or their luggage. A corporation neglecting to prescribe and furnish such uniform cap and badges shall forfeit one hundred dollars for each week of the continuance of such neglect; and if any employé for whom such uniform cap and badge is prescribed neglects when on duty to wear the same, the corporation employing him shall for each case of such neglect forfeit the sum of twenty-five dollars; and no employé, unless wearing his uniform and badge, shall be permitted to exercise any authority or to perform any of the duties of his office.

May convey passengers at reduced rates upon designated trains.

SECTION 135. Any railroad corporation may make contracts for the conveyance of passengers upon designated trains, for a specific distance, at fixed times, at such reduced rates of fare as the parties may agree upon. Tickets may be issued for such passengers, upon which shall be plainly printed the terms upon which they may be used. Such tickets shall not be transferable without the consent of the corporation, nor entitle the holder to ride upon any train not therein designated.

To furnish checks to passengers for baggage.

SECTION 136. Every railroad corporation, when requested, shall give checks to passengers for their baggage when delivered for transportation, and shall re-deliver the same to the passengers upon the surrender of their checks. Any corporation which refuses to comply with the provisions of this section shall forfeit ten dollars, for each offence.

(e.) Accommodations regarding merchandise.

To give receipts to shippers of merchandise.

SECTION 137. When any person delivers to a railroad corporation for transportation, any commodity not extra hazardous in its character, such corporation shall give to

the shipper thereof, if requested at the time of the delivery of such commodity, a receipt for the same, describing such commodity, or the marks and numbers on packages so received for transportation, and no additional charge shall be made for giving such receipt. Any railroad corporation which refuses to give such receipt, shall pay to the person entitled to the same the sum of fifty dollars, to be recovered in an action of tort.

SECTION 138. Every railroad corporation shall give to all persons or companies, reasonable and equal terms, facilities and accommodations for the transportation of themselves, their agents and servants, and of any merchandise and other property, upon any railroad owned or operated by such corporation, and for the use of the depot and other buildings and grounds of such corporation; and at any point where its railroad shall connect with any other railroad, reasonable and equal terms and facilities of interchange.

All persons, &c., to receive equal facilities for transportation.

SECTION 139. Every railroad corporation shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road, according to the directions contained thereon or accompanying the same, and shall not receive and forward over its road any merchandise consigned, ordered or expressly directed to be received and forwarded by a different route.

Merchandise to be forwarded promptly.

SECTION 140. No railroad corporation shall charge or receive for the transportation of freight to any station on its road a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its road in the same direction. Two or more railroad corporations, whose roads connect, shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the road of either of them in the same direction. In the construction of this section the sum charged or received for the transportation of freight shall include all terminal charges; and the road of a corporation shall include all the road in use by such corporation, whether owned or operated under a contract or lease.

Charges for transportation of freight.

Penalties on
corporation.

SECTION 141. A railroad corporation which violates any of the provisions of either of the three preceding sections, in addition to liability for all damages sustained by reason of such violation, shall be liable for each offence to a penalty of two hundred dollars, which may be recovered in an action of tort, to his own use by the party aggrieved, or to the use of the Commonwealth by the attorney-general or the district-attorney of the district in which such violation was committed: *provided, however*, that no such action shall be maintained unless the same shall be brought within sixty days from the date of such violation.

(f.) *Animals.*

Transportation
of animals.

SECTION 142. No railroad corporation, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding, for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall be properly fed, watered and sheltered during such rest, by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad corporation transporting the same, at the expense of said owner or person in custody thereof, and said corporation shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any corporation, owner or custodian of such animals who shall fail to comply with the provisions of this section, shall for each and every such offence be liable for and forfeit and pay a penalty of not less than one nor more than five hundred dollars: *provided, however*, that when animals shall be carried in cars in which they can and do have proper food, water, space and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply.

9. *Railroad Police.*

(a.) *Appointment of railroad police officers.*

Railroad police
officers to be
appointed.

SECTION 143. The selectmen of any town, or the mayor and aldermen of any city may, upon the petition

of any railroad corporation having a passenger station within the limits of such town or city, appoint as many as they may deem proper of the persons in the employ of said corporation police officers, to act as railroad police for the purposes and with the powers hereinafter set forth. A copy of the record of the appointment of any railroad police officer shall be filed by the clerk of the corporation upon whose petition such order is made, with the clerk of each town or city through or into which such railroad extends and in which it is intended that such police shall act; and the filing of such order shall constitute the persons named therein railroad police within such towns or cities. Such police officers shall hold their offices during the pleasure of the selectmen or mayor and aldermen by whom they are appointed: *provided*, that when any corporation shall cease to require the services of any of the railroad police appointed upon its petition, it may file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of said officer shall cease.

SECTION 144. Every officer of the railroad police shall, when on duty except as a detective, wear in plain view a metallic badge, inscribed with the words "Railroad Police" and the initials or name of the corporation for which he is appointed. To wear badges.

SECTION 145. Officers of the railroad police may preserve order within and upon the premises and upon the cars of the corporation upon whose petition they are appointed; they may arrest without a written warrant all idle, intoxicated or disorderly persons frequenting such premises or cars and obstructing or annoying by their presence or conduct, or by profane or indecent language or behavior, travellers using the same, and may take the persons so arrested to the nearest police station or other place of lawful detention. May arrest disorderly persons without a warrant.

SECTION 146. Whenever any passenger upon a railroad train refuses to pay his fare, or behaves in a noisy or disorderly manner, any railroad police officer may arrest him without a written warrant and remove him to the baggage or other suitable car of such train, where such officer may confine him until the arrival of the train at some station where he can be placed in charge of an officer who shall take him to a place of lawful detention. May arrest passenger for refusing to pay fare.

Compensation
to be paid by
corporation.

SECTION 147. The compensation of all railroad police shall be paid by the corporations upon whose petition they are respectively appointed. And such corporations shall be liable to parties aggrieved by any official misconduct of such railroad police to the same extent as for the torts of agents and servants in their employ.

(b.) Offences and penalties.

Penalties.
Walking on
track.

SECTION 148. Whoever without right knowingly stands or walks on a railroad track shall forfeit a sum not less than five nor more than fifty dollars.

Loitering in
station house.

SECTION 149. Whoever without right loiters or remains within any station house of a railroad corporation or upon the platform or grounds adjacent to such station, after being requested to leave the same by any railroad officer, shall forfeit a sum not less than two nor more than twenty dollars.

Evading pay-
ment of fare.

SECTION 150. Whoever fraudulently evades or attempts to evade the payment of any toll or fare lawfully established by a railroad corporation, either by giving a false answer to the collector of the toll or fare, or by travelling beyond the point to which he has paid the same, or by leaving the train without having paid the toll or fare established for the distance travelled, or otherwise, shall forfeit a sum not less than five nor more than twenty dollars. Whoever does not upon demand first pay such toll or fare shall not be entitled to be transported for any distance; but no person shall be removed from any car except as provided in section one hundred and forty-six; nor from any train except at a regular passenger station.

Riding or driv-
ing horse on a
railroad.

SECTION 151. Whoever rides, drives or leads a horse or other beast on a railroad, after it is opened for use, without the consent of the corporation or its agent (except in the proper use of a street railway, turnpike, highway or other way or travelled place at a crossing of such railroad therewith upon the same level), shall for each offence forfeit a sum not exceeding one hundred dollars, and be liable for any damage resulting therefrom.

Negligence in
permitting any
beast going at
large upon rail-
road.

SECTION 152. The person through whose fault or negligence a horse or other beast goes at large within the limits of a railroad after it is opened for use, shall for each offence forfeit a sum not exceeding twenty dollars, and be liable for any damage resulting therefrom.

SECTION 153. Whoever enters upon or crosses a railroad at any private way which is closed by gates or bars, and neglects to securely close them, shall forfeit for each offence a sum not less than two nor more than ten dollars, and shall be liable for any damage resulting therefrom.

Neglecting to close gates where private way crosses railroad.

SECTION 154. Whoever wilfully and maliciously obstructs the passing of any carriage on a railroad, or in any way injures such road or anything appertaining thereto, or any materials or implements for the construction or use thereof, or aids or abets in such trespass, shall forfeit to the use of the corporation for each offence treble the amount of damages proved to have been sustained thereby, to be recovered in an action of tort in the name of the corporation; and may further be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year.

Wilfully obstructing passage of carriage on railroad.

SECTION 155. Whoever commits any of the acts mentioned in the preceding section, in such manner as thereby to endanger life, shall be punished as provided in said section, or by imprisonment in the state prison not exceeding twenty years.

Additional punishment when life is endangered.

SECTION 156. Whoever, by himself or others, obstructs any engine or carriage passing upon a railroad, or endangers the safety of persons conveyed in or upon the same, or aids or assists therein, shall be punished by solitary imprisonment in the state prison not exceeding ten days, and by confinement afterwards in said prison at hard labor not exceeding twenty years.

Obstructing engine, &c., and endangering safety of passengers, &c.

SECTION 157. Whoever wilfully does or causes to be done anything with intent to obstruct any engine or carriage passing upon a railroad, or with intent to endanger the safety of persons conveyed in or upon the same, or aids or assists therein, shall be punished by imprisonment in the state prison not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year, and shall forfeit to the use of the corporation for each offence treble the amount of damages proved to have been sustained thereby, to be recovered in an action of tort.

Intent to obstruct engine or carriage.

SECTION 158. Whoever breaks and enters, in the night-time, any railroad car, or enters in the night-time without breaking, or breaks and enters in the day-time, any railroad car, with intent to commit the crime of larceny or any other felony, shall be punished by imprison-

Breaking and entering cars with intent to commit felony.

ment in the state prison not exceeding ten years, or by a fine not exceeding five hundred dollars, and imprisonment in the house of correction not exceeding two years.

10. *Accidents, and Responsibility therefor.*

Coroner to be notified when accident is attended with loss of life.

SECTION 159. Every railroad corporation shall cause immediate notice of any accident which may occur on its road, attended with loss of life to any person, to be given to a coroner of the county residing nearest to the place of accident, and shall also give notice within twenty-four hours to the board of railroad commissioners of any such accident, or of any accident falling within a description of accidents of which said board may by general regulation require notice to be given. For each omission to give such notice the corporation shall forfeit a sum not exceeding one hundred dollars.

Costs recoverable by town, &c.

SECTION 160. When a party upon the trial of an action recovers damages of a city or town for an injury caused to his person or property by a defect in a highway within the location of a railroad, the city or town, if the corporation owning the road is liable for such damages and has had reasonable notice to defend the action, may, in addition to the damages, recover all costs of both plaintiff and defendant in the action.

Penalty on agent for an injury caused by negligence.

SECTION 161. When an engineman, fireman or other agent of a corporation is guilty of negligence or carelessness whereby an injury is done to any person or corporation, he shall be punished by imprisonment not exceeding twelve months, or by a fine not exceeding one thousand dollars.

Penalty for gross carelessness in management of trains.

SECTION 162. Whoever, having management of or control over a railroad train while being used for the common carriage of persons, is guilty of gross carelessness or neglect in or in relation to the management or control thereof, shall forfeit a sum not exceeding five thousand dollars, or be imprisoned not more than three years.

Penalty for loss of life through negligence, &c.

SECTION 163. If by reason of the negligence or carelessness of a railroad corporation, or of the unfitness or gross negligence or carelessness of its servants or agents while engaged in its business, the life of any person being a passenger is lost; or the life of any person being in the exercise of due diligence, and not being a passenger or in the employment of such corporation, is lost; in either case, the corporation shall be punished by a fine not ex-

ceeding five thousand nor less than five hundred dollars, to be recovered by indictment and paid to the executor or administrator for the use of the widow and children of the deceased in equal moieties, but if there are no children to the use of the widow, or if no widow to the use of the next of kin : *provided*, that the corporation shall not be so liable for the loss of life by any person while walking or being upon its road contrary to law or the reasonable rules and regulations of the corporation. Indictments against a corporation for loss of life shall be prosecuted within one year from the injury causing the death.

SECTION 164. If a person is injured in his person or property by collision with the engines or cars of a railroad corporation at a crossing, such as is described in section one hundred and twenty-three, and it appears that the corporation neglected to give the signals required by said section, and that such neglect contributed to the injury, the corporation shall be liable for all damages caused by the collision, or to a fine recoverable by indictment, as provided in the preceding section, unless it is shown that, in addition to a mere want of ordinary care, the person injured, or the person having charge of his person or property, was, at the time of the collision, guilty of gross or wilful negligence, or was acting in violation of the law ; and that such gross or wilful negligence or unlawful act contributed to the injury:

Liability for damages in case of collision, &c.

11. Connecting Railroads.

SECTION 165. When any railroad constructed since the eighth day of April in the year one thousand eight hundred and seventy-two, meets another railroad terminating in the same city or town, or lawfully crosses another railroad at the same level therewith, the corporation by which either of said railroads is owned may enter its road upon, unite the same with and use the road of the other ; and whenever any railroad corporation whose road was constructed prior to said eighth day of April, has been or may be specially authorized to enter its road upon, unite the same with and use the railroad of another corporation, each of the corporations whose roads thus connect may enter upon, unite its road with, and use the road of the other ; but no locomotive engine or other motive power shall be allowed to run upon a railroad except such as is owned and controlled by the corporation owning or lawfully

Connecting railroads may enter upon and use each other's roads.

operating the road, or with the consent of such corporation.

Compensation
for drawing
cars, &c.

SECTION 166. When two corporations are authorized as in the preceding section, each to enter with its road upon, unite the same with and use the road of the other, each of them shall at reasonable times and for a reasonable compensation draw over its road the passengers, merchandise and cars of the other, and each of them shall for a reasonable compensation provide upon its road convenient and suitable depot accommodations for the passengers and merchandise of the other road passing to and over it, and shall receive and deliver the same in the manner it receives and delivers its own passengers and freight.

If agreement is
not made, rail-
road commis-
sioners to deter-
mine rates, &c.

SECTION 167. If the corporations cannot agree upon the stated periods at which the cars of one shall be drawn over the other, and the compensation to be paid therefor, or cannot agree upon the terms and conditions upon which accommodations shall be furnished for the passengers and merchandise of the other, or if two corporations operating roads of different gauges cannot agree as to the requisite terminal accommodation, or as to the manner in which freight and passengers shall be transferred from one road to the other and forwarded, the board of railroad commissioners, upon the petition of either party and notice to the other, shall hear the parties, and shall in each case determine (having reference to the convenience and interest of the corporations and of the public to be accommodated thereby), the stated periods for drawing cars, and compensation therefor, or the terms and conditions for passengers and merchandise, or the requisite terminal accommodations and manner of transferring passengers and freight as aforesaid; and upon the application of either party shall determine all questions between the parties in relation to the transportation of freight and passengers and other business upon and connected with said roads in which they are jointly interested, and the manner in which the business shall be done, and apportion to the corporations their respective shares of the expenses, receipts, and income of the same; and the award of the commissioners or a major part of them, shall be binding upon the respective corporations interested therein, for one year or until the commissioners shall revise and alter the same. The compensation of the commissioners for services and expenses under this section, shall be paid by the respective corporations in

such proportions as the commissioners shall determine and set forth as part of their award: *provided, however*, that any award made in pursuance of this section shall, on the request in writing of any party affected thereby, filed within thirty days of the rendering of such award, be returnable into the supreme judicial court, and shall be there subject to revision in the same manner as if the said commissioners had derived their power to act in the premises under the appointment of said court.

SECTION 168. Railroad corporations created by the laws of other states shall have all the rights and privileges as regards connecting roads, under the three preceding sections, of corporations created by this state.

Connecting roads chartered by other states.

SECTION 169. Any railroad corporation chartered by the concurrent legislation of this and other states shall, as regards any portion of its road lying within this state, be entitled to all the benefits and be subject to all the liabilities of the railroad corporations of this state.

Roads chartered by this and other states.

SECTION 170. Two railroad corporations created by this state, whose roads enter upon or connect with each other, may contract that either corporation shall perform all the transportation of persons and freight upon and over the road of the other; and any railroad corporation created by this state may lease its road to any other railroad corporation so created, with whose road it connects or which it intersects, upon such terms as the directors may agree and as may be approved by a majority in interest of both corporations at meetings called for the purpose; and copies of such contracts or leases shall be deposited with the board of railroad commissioners, and full statements of the facts shall be set forth in the next annual return of such corporations or either of them: *provided*, that the facilities for travel and business on either of the roads of the said corporations shall not be diminished; and *provided, further*, that the income arising from such contracts or leases shall be subject to the provisions of law in regard to the right of the state to purchase the roads or reduce their tolls, in the same manner as that arising from the use of the roads. This section shall not authorize any lease or contract between any two railroad corporations each of which has a terminus in the city of Boston.

Connecting roads may contract that one road shall perform all transportation for the other.

IV. ANNUAL RETURNS.

Books to be subject to inspection of committee of legislature and commissioners.

Annual returns.

Fee of \$20 to be paid to treasurer of Commonwealth.

Corporation which has leased road to make returns required of lessor.

SECTION 171. Every railroad corporation shall at all times submit its books to the inspection of the board of railroad commissioners, or of any committee of the legislature authorized to inspect them; and its directors shall annually, on or before the first Wednesday of November, prepare, make oath to and transmit to the board of railroad commissioners a report of their doings for the year ending on the thirtieth day of September preceding, to be called the annual return. Such report shall state whether any fatal accident or serious injury has occurred to a passenger or other person upon the road during the year, and if so, the cause of such accident or injury and the circumstances under which it occurred; it shall set forth copies of all contracts or leases, if any, made with other railroad corporations during the year, and specify the receipts and expenditures under the same; and shall include a detailed statement of all particulars respecting the railroad, its business, receipts and expenditures during the year, in such form as shall be from time to time prescribed by the board of railroad commissioners agreeably to section fifteen; and the books of the corporation shall be so kept that returns may be made in exact conformity with the form thus prescribed, and the accounts closed on the thirtieth day of September in each year, so that a balance sheet of that date can be taken therefrom and included in the return.

SECTION 172. At the time of making the annual return, as provided in the preceding section, the railroad corporation shall pay to the treasurer of the Commonwealth the sum of twenty dollars, which shall be appropriated to the payment of the expenses incurred in the printing and binding of the returns of the several railroad corporations, under the provisions of section sixteen.

SECTION 173. Every railroad corporation which has leased the railroad of any other corporation shall, during the continuance of such lease, make all the returns required of the lessor, and shall pay the sum required by the preceding section; and during the continuance of such lease the said lessor shall not be required to make such returns or payment: *provided*, that when requested by the lessee the lessor shall furnish all the information in its possession needed to make such returns; and *provided, further*, that

in case a railroad in this Commonwealth is leased to a corporation or party in another state, the duty of making the annual return and payment shall remain with the lessors in this state.

SECTION 174. Every railroad corporation neglecting to make the annual return within the time prescribed in section one hundred and seventy-one, or to make the payment within the time prescribed in section one hundred and seventy-two, or to supply defects and omissions within fifteen days, when pointed out by the board of railroad commissioners, as provided in section fifteen, shall forfeit, in each case, fifty dollars for each day's neglect, to be recovered by the treasurer; and if any corporation unreasonably refuses or neglects to make a report or return as prescribed by section one hundred and seventy-one, it shall forfeit for every such refusal or neglect a sum not exceeding five thousand dollars.

Penalty for neglecting to make annual return.

V. RAILROAD TRACKS FOR PRIVATE USE.

SECTION 175. Any person or corporation may construct a railroad track for private use in the transportation of freight, subject to the provisions of the following section: *provided*, that nothing herein contained shall be construed to authorize the taking or use of lands or other property without the consent of the owner thereof.

Railroad tracks for private use.

SECTION 176. No such track shall be connected with the tracks of a railroad corporation without the consent of such corporation; and no such track shall be constructed across or upon a highway, town way or travelled place, except with the consent of the mayor and aldermen or selectmen of the city or town, and in a place and manner approved by them. If said mayor and aldermen or selectmen consent, they shall make from time to time such regulations in regard to the motive power to be employed, the rate of speed to be run, and time and manner of using the track over and upon such way or travelled place, as in their judgment the public safety and convenience require, and they may order such changes to be made in the track as are rendered necessary by the alteration or repair of such way. If they allow steam power to be used on such track, the provisions of this act relating to the crossing of ways and travelled places by railroad corporations shall apply to such track and the person or corporation by whom the same was constructed.

Not to be connected with tracks of corporation without consent.

VI. CONCLUDING SECTIONS.

Penalties on
directors.

SECTION 177. If any railroad corporation assumes without authority of the legislature, to increase its capital stock beyond the maximum fixed in its act of incorporation or in conformity with the provisions of this act, or to declare any stock dividend or divide the proceeds of the sale of stock among its stockholders, or issue certificates of stock to any person whatever (when the par value of the shares so issued is not first paid in cash to the treasurer of said corporation), all certificates of stock so issued shall be void, and the directors of any railroad corporation issuing the same shall be liable to a penalty of one thousand dollars each, to be recovered by indictment in any county where any of said directors reside: *provided*, that if any such director shall prove that previous to such issue he filed his dissent in writing thereto with the clerk of said corporation, or was absent, and at no time voted therefor, he shall not be liable for the same. And if any railroad corporation owning a railroad in this Commonwealth and consolidated with a corporation in another state owning a railroad therein, increases its capital stock or the capital stock of such consolidated corporation, except as authorized by this act, without authority of the legislature of this Commonwealth, or without such authority extends its line of road, or consolidates with any other corporation, or makes a stock dividend, the charter and franchise of such corporation shall be subject to be forfeited and become null and void.

Rights of the
Commonwealth
not impaired.

SECTION 178. Nothing in this act contained shall be construed to impair the rights of the Commonwealth as asserted or reserved in previous acts. The provisions of this act, and the franchises, rights, powers, privileges, duties and liabilities of railroad corporations established under this or any other general act, may be altered, amended or repealed, and the legislature may annul or dissolve any such corporation.

Rates of fare,
&c., may be
established by
corporation.

SECTION 179. Any railroad corporation may establish for its sole benefit fares, tolls and charges upon all passengers and property, conveyed or transported on its railroad, at such rates as may be determined by the directors thereof, and may from time to time by its directors regulate the use of its road: *provided*, that such rates of fares, tolls and charges, and regulations, shall at all times be subject

Proviso.

to revision and alteration by the legislature, or such officers or persons as the legislature may appoint for the purpose anything in the charter of any such railroad corporation to the contrary notwithstanding.

SECTION 180. The Commonwealth may at any time during the continuance of the charter of any railroad corporation, after the expiration of twenty years from the opening of its road for use, purchase of the corporation its road and all its franchise, property, rights and privileges, by paying therefor such sum as will reimburse it the amount of capital paid in, with a net profit thereon of ten per cent. a year from the time of the payment thereof by the stockholders to the time of the purchase.

Commonwealth may purchase road after expiration of twenty years.

SECTION 181. The Commonwealth may at any time take and possess the road, franchise and other property of any railroad corporation after giving one year's notice in writing to such railroad corporation, and paying therefor such compensation as may be awarded by three commissioners, who shall be appointed by the supreme judicial court, and shall be duly sworn to appraise the same justly and fairly; said commissioners shall estimate and determine all damages sustained by any such railroad corporation by such taking of the road, franchise and other property thereof, and any such corporation aggrieved by the determination of said commissioners, may have its damages assessed by a jury of the superior court in the county of Suffolk, in the same manner as is provided by law with respect to damages sustained by reason of the laying out of ways in the city of Boston.

May take road at any time after giving one year's notice.

SECTION 182. Sections one to twelve inclusive, sections seventeen to one hundred and twenty-three inclusive, and sections one hundred and thirty-two to one hundred and thirty-seven, inclusive, of chapter sixty-three of the General Statutes; and the acts named in the following schedule, are hereby repealed.

Repeal.

SCHEDULE.

Acts of the Year One Thousand Eight Hundred and Sixty.

Chapter 201. An act concerning railroads.

List of acts repealed.

One Thousand Eight Hundred and Sixty-one.

Chapter 100. An act defining the rights of owners or occupants of lands adjoining railroads.

One Thousand Eight Hundred and Sixty-two.

Chapter 81. An act authorizing the sounding of locomotive whistles.

Chapter 103. An act concerning damages for land taken by railroad corporations.

Chapter 123. An act concerning private railroad crossings.

Chapter 135. An act concerning railroad returns and reports.

*Relating to Railroads.***One Thousand Eight Hundred and Sixty-three.**

- Chapter 181. An act relating to drawbridges in railroads.
 Chapter 212. An act requiring railroad corporations to hold annual meetings.
 Chapter 219, § 2. Section two of an act concerning public reports and documents.
 Chapter 224. An act relating to the returns and reports of railroad corporations.

One Thousand Eight Hundred and Sixty-four.

- Chapter 167. An act to amend an act concerning railroad returns and reports.

One Thousand Eight Hundred and Sixty-five.

- Chapter 175. An act concerning railroad corporations.
 Chapter 239. An act concerning railroad crossings at grade.

One Thousand Eight Hundred and Sixty-seven.

- Chapter 127. An act relating to leased railroads.
 Chapter 298. An act relating to the leasing of railroads and contracts concerning the operating of the same.
 Chapter 339. An act concerning railroads.

One Thousand Eight Hundred and Sixty-eight.

- Chapter 106. An act relating to the place of holding the annual meetings of railroad corporations.
 Chapter 347. An act to authorize railroad corporations to subscribe to the capital stock of steamship corporations duly chartered by the laws of this Commonwealth.

One Thousand Eight Hundred and Sixty-nine.

- Chapter 50. An act authorizing directors of railroad corporations to choose one of their number vice-president, with a salary.
 Chapter 131. An act to authorize railroad corporations to issue registered bonds.
 Chapter 308. An act concerning railroad bridges and bridge-guards.
 Chapter 344, § 3. Section three of an act for the more effectual prevention of cruelty to animals.
 Chapter 408. An act to establish a board of railroad commissioners, with the exception of section five.
 Chapter 419. An act to amend the form of returns required of railroad corporations other than street railways.
 Chapter 426. An act to provide for the better protection of persons and property upon railroads.

One Thousand Eight Hundred and Seventy.

- Chapter 276. An act to amend an act concerning railroad bridges and bridge-guards.
 Chapter 307. An act concerning the returns of railroad corporations, and for other purposes.
 Chapter 325. An act concerning railroad corporations.

One Thousand Eight Hundred and Seventy-one.

- Chapter 7. An act requiring railroad trains to be equipped with tools.
 Chapter 24. An act requiring safety switches in railroads.
 Chapter 83. An act to prevent the obstruction of highways by railroad corporations.
 Chapter 143. An act to authorize special contracts for the transportation of passengers on designated trains upon railroads.
 Chapter 232. An act to authorize the construction of railroad tracks for private use in the transportation of freight.
 Chapter 316. An act in addition to an act to prevent the obstruction of highways by railroad corporations.
 Chapter 331. An act to provide for a railroad police, and for the better protection of passengers upon railroad trains and at railroad stations.
 Chapter 333. An act requiring railroad corporations to have an adequate capital stock before beginning to build their roads.
 Chapter 352. An act for the better protection of travellers at railroad crossings.
 Chapter 363. An act to regulate freight charges on railroads.
 Chapter 384. An act to authorize railroad corporations to guarantee the bonds of connecting railroads.
 Chapter 389. An act concerning railroad corporations whose roads extend beyond the limits of the State.
 Chapter 392. An act in addition to an act relating to the increase of capital stock by corporations.

One Thousand Eight Hundred and Seventy-two.

- Chapter 53. An act to authorize the formation of railroad corporations.
- Chapter 162. An act to authorize the re-location of passenger stations and freight depots by railroad corporations.
- Chapter 180. An act to provide for the leasing and location of railroads and for the connection of railroads of different gauges, and the guaranteeing of bonds by railroad corporations.
- Chapter 191. An act in relation to sign-boards at grade crossings of railroads and highways.
- Chapter 262. An act concerning the crossing of railroads by highways and town ways.
- Chapter 276. An act to regulate the lighting of railroad passenger cars.
- Chapter 288. An act to fix the number of printed copies of the annual report of the railroad commissioners.
- Chapter 308. An act in relation to the giving of receipts for freight by railroad corporations.
- Chapter 313. An act in addition to an act regulating railroad crossings at grade.

One Thousand Eight Hundred and Seventy-three.

- Chapter 98. An act concerning accidents on railroads.
- Chapter 121. An act to amend chapter fifty-three of the acts of eighteen hundred and seventy-two entitled "An act to authorize the formation of railroad corporations."
- Chapter 194. An act relating to the annual returns of railroad and street railway corporations.
- Chapter 240. An act in addition to an act to regulate freight charges on railroads.
- Chapter 361. An act in relation to connecting railroads; and section four of chapter three hundred and forty-six of the acts of the year eighteen hundred and seventy-three.
- Chapter 377, § 6. Section six of an act relating to the salaries of certain state officers and employes.

One Thousand Eight Hundred and Seventy-four.

- Chapter 70. An act concerning the breaking and entering of railroad cars.
- Chapter 122. An act extending the equity powers of the supreme judicial court.
- Chapter 223. An act in relation to the opening of railroads for public use.
- Chapter 226. An act in relation to bridge-guards on railroads.
- Chapter 251. An act to authorize towns and cities to subscribe for and hold stock in railroad corporations.
- Chapter 292. An act in relation to the uniform of certain employes of railroad corporations.
- Chapter 298. An act in addition to an act to authorize the formation of railroad corporations.
- Chapter 305. An act to amend chapter two hundred and sixty-two of the acts of eighteen hundred and seventy-two, entitled "An act concerning the crossing of railroads by highways and town ways."
- Chapter 323. An act in relation to the place of holding the annual meetings of railroad corporations.
- Chapter 351. An act to authorize and regulate the building of branches and extensions by railroad corporations.
- Chapter 362. An act relating to application for damages to private ways by railroads.
- Chapter 355. An act to amend section nineteen of the sixty-third chapter of the General Statutes relating to the taking of lands by railroad companies.

SECTION 183. The repeal of certain sections of the General Statutes and of certain acts, as provided in the preceding section hereof, shall not revive any law heretofore repealed or superseded, nor any office heretofore abolished; it shall not affect any act done, or any right accruing, accrued or established, or any proceedings, doings or acts ratified or confirmed, or any suit or proceeding had or commenced before the repeal takes effect, but the proceedings therein shall, when necessary, conform to the provisions of this act; it shall not affect any penalty or forfeiture incurred before it takes effect, under any of the laws repealed, except that where a punishment, penalty or forfeiture is mitigated by the provisions of this

Repeal not to revive any law heretofore repealed, &c.

act, such provisions may be extended and applied to any judgment pronounced after said repeal; it shall not affect any suit or prosecution pending at the time of the repeal for an offence committed, or for the recovery of a penalty or forfeiture incurred under any of the acts repealed, except that the proceeding therein shall, when necessary, conform to the provisions of this act; and when a limitation or period of time prescribed in any of the acts repealed, for acquiring a right or barring a remedy, or any other purpose, has begun to run, and the same or similar limitation is prescribed in this act, the time of limitation shall continue to run, and shall have like effect as if the whole period had begun and ended under the operation of this act. All persons who at the time when said repeal takes effect hold any office under any of the acts repealed, shall continue to hold the same according to the tenure thereof, except those offices which have been abolished and those as to which a different provision has been made by the legislature. The provisions of this act, so far as they are the same as those of existing laws, shall be construed as a continuation of such laws, and not as new enactments, and references in laws not repealed to provisions of laws incorporated into this act and repealed, shall be construed as applying to the same provisions so incorporated.

To take effect
February 1,
1875.

SECTION 184. This act shall take effect on the first day of February, in the year one thousand eight hundred and seventy-five.

Approved June 27, 1874.

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